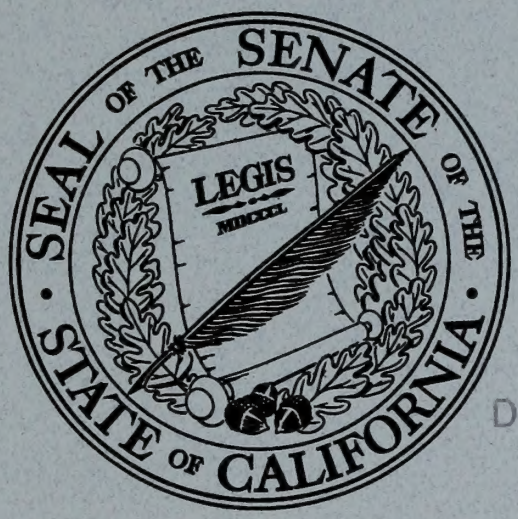
HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 16, 2006
1:38 P.M.

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SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 16, 2006

1:38 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

WILLIAM H. WADE, III
State Director and California Adjutant General
Military Department

ASSEMBLY MEMBER CHUCK DE VORE

SENATOR JOSEPH DUNN

THOMAS L. FREEMAN, Colonel
California National Guard
Governmental and International Affairs

PETE CONATY
California State Commanders Veterans Council

JOHN LOVELL
California Narcotic Officers' Association

ATTORNEYS:

EVERETT PERCY

SENATOR JOE SANTOS, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR BOB ASHBURN

SENATOR TERRY BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

DREW SCHMITZ, Executive Director

PAT KEAN, Committee Secretary

BETTIE BARTLEMAN, Consultant on Governor's Appointments

SUSIE SMATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to TERRY BOWEN

DAN ZAVATE, Consultant to SENATOR CEDILLO

ALSO PRESENT

WILLIAM M. KEON, III
State Director and California Employee Ombuds
Military Department

ASSEMBLY MEMBER CHUCK DE VORE

SENATOR JOHN ASH

THOMAS L. FREEMAN, Colonel
California National Guard
Governmental and Legislative Affairs

JEFF CONROY
California State Veterinary Medicine Council

TOM LOVERAL
California Medical Officers' Association

1 JOHN ZELL, Master Gunnery Sergeant, Retired
United States Marine Corps
2
LAURA SEGURA
3 National Teen Leadership Program
4
ROBERT J. BRANDT, Major General, Retired
5 Former Assistant Adjutant General, California National Guard
6 LISA NASH-DURHAM
Staff Support
7
EDWARD ROSS
8 Transportation Security Administration (TSA)
9
KEN WAHL, Master Sergeant, Retired
10 President, Sergeants Major Association
California Enlisted National Guard
11
MICHAEL O. ELLIS, CW5
12 Warrant Officers Association
13
RICHARD V. MARTINEZ
14 American G.I. Forum
15 DAVID A. APPLING, Colonel, Ret.
President, Association of the U.S. Army, Sixth Region
16
ANITA KENNEDY
17 Staff Support
18
JOHN BERNATZ
19 NGAC
20
KATHLEEN LUSSON
21 Former TSA Employee
22 MARK T. ARSENAULT
Husband of Former TSA Employee
23
MARGARET ARSENAULT
24 Former TSA Employee
25
SANDRA L. BRYSON, Member
26 Board of Parole Hearings
Adult Parole
27
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1 JACK E. GARNER, Member
Board of Parole Hearings
2 Adult Parole

3 STAN L. DIXON, Member
State Board of Forestry and Fire Protection
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5 PAMELA A. GIACOMINI, Member
State Board of Forestry and Fire Protection
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JAMES J. OSTROWSKI, Member
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8 GARY C. RYNEARSON, Member
9 State Board of Forestry and Fire Protection

10 BRUCE SAITO, Member
State Board of Forestry and Fire Protection
11

12 SENATOR WES CHESBRO

13 SCOTT WETCH
Joint Labor Management Committee
14 Forest Products Association

15 WILLIAM KEYE
California Licensed Foresters Association
16

17 DAVID BISCHEL, President
California Forestry Association
18

NOELLE CREMERS
19 California Farm Bureau Federation

20 DENISE DUNCAN
21 Lumber Association of California and Nevada

22 CHRIS QUIRMBACH
Timber Products Company
23

DAN WELDON
24 Forest Landowners of California

25 PAUL MASON
26 Sierra Club

27 JEFF SHELLITO
California Trout
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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN PERATA: Those of you have who have looked at the agenda, there are quite a few required to appear. It doesn't mean that people are required to talk. If you feel compelled to be silent, maybe offer a prayer, that's good.

[Laughter.]

CHAIRMAN PERATA: Having suggested that, General, would you like to come forward.

Assembly Member DeVore, are you here? Did you want to come forward, sir?

ASSEMBLY MEMBER DE VORE: Thank you, Mr. Chairman.

CHAIRMAN PERATA: Welcome.

ASSEMBLY MEMBER DE VORE: Thank you, Mr. Chairman. Would the Chairman care for me to proceed?

CHAIRMAN PERATA: Please do.

ASSEMBLY MEMBER DE VORE: Thank you very much.

Thank you, Mr. Chairman and Members of the Committee.

For 23 years I've served America in uniform as a citizen soldier, the last 18 years of which I've served in the California Army National Guard. I now hold the rank of Lieutenant Colonel.

The reason why I'm here today, Mr. Chairman and Committee Members, is I think it's very important to relate to the Committee that senior members of the National Guard today achieve their promotions through a lot of hard work and

schooling. That's what it takes to achieve the federal recognition it takes to honor or to recognize our rank.

In addition to my uniformed service, I'm the Vice Chairman of the Assembly Committee on Veterans Affairs, and I also sit on the Budget Sub 4 Committee in the Assembly, which has budgetary jurisdiction over the National Guard. So, not only do I serve in uniform on the weekends, I've got policy and budgetary jurisdiction over the Military Department.

So, I believe that I've got a very thorough understanding of California's National Guard forces and the 20,000 citizen soldier members of the National Guard who serve our state.

With this in mind, I hope that the Committee will indulge me when I say that the Military Department is unique among our state's agencies. To fully understand how much of this is true, I think one need look no further than the flag pole on the western face of our Capitol Building. Every morning when I walk out of the Lewis Apartments on N Street, I look at that flag pole. And if that flag pole is at half staff, that means that a member of the military forces from the State of California has died sometime in the last three days. I say a silent prayer for the family of the deceased, and I think about the fact that that person died on the field of battle in defense of our Constitution and, of course, in defense of our liberties.

And I think therein is the most significant distinction between just a basic department of the State of California and the Military Department, because with members of

1 your California National Guard, they're deployed world-wide to
2 places like Afganistan, Iraq, peacekeeping missions in the
3 Balkans, et cetera.
4 So, I think to kind of wrap up this train of
5 thought, when a member of the California National Guard dies,
6 and often times when that flag is at half staff, it's because a
7 member of the California National Guard has died in the line of
8 duty to his or her nation. It's the Adjutant General of the
9 State of California who makes the phone call, who writes the
10 letters, who goes to the funeral, who tries to console the
11 family. And again, therein I think is a fairly significant
12 difference between the Military Department and other departments
13 that serve the State of California.
14 I think to say that the Military Department has
15 endured a degree of organizational stress in recent years is an
16 understatement. We've had three Adjutants General in three
17 years. And along with this turnover, you have to add on top of
18 that the rigors of having deployed over 21,000 personnel in
19 support of the global War on Terrorism.
20 So, I believe that the Committee's action today
21 will have a significant impact, for good or ill, on a state
22 agency critical to the health, safety, and welfare of 37 million
23 Californians.
24 Members of the National Guard, and I think this
25 is an important kind of observation that I can provide the
26 Committee, tend to affiliate more with their units than with
27 their specialty. Now, why this is important is that when you
28 join the National Guard, you're going to be around the same

1 people for year after year after year. In the regular Army or
2 the Air Force, you are constantly moving between stations. And
3 as a result, in the National Guard, your reputation for good or
4 ill is going to be very well known to your colleagues. It's
5 impossible to hide it. You cannot hide it in the National
6 Guard. So, we get to know each other extremely well. And for
7 this reason, an officer's reputation is well known by his or her
8 colleagues. It's impossible to hide a defective personality in
9 the National Guard.
10 With that in mind, I've known Major General Wade
11 by his military reputation for well over a decade, and I've
12 known him through working with him in uniform for a little over
13 three years now when I began serving with General Wade when he
14 was at the time a full Colonel in the 40th Infantry Division
15 Mechanized. Later on I saw his promotion to Brigadier General,
16 which is a one-star general. And of course now he sits before
17 you today as a two-star general, or a Major General.
18 During that time, I've known Major General Wade
19 to have a stellar reputation among his fellow officers.
20 So in closing, I'd like to implore the Committee
21 to vote to confirm Major General William Wade to the position of
22 Adjutant General, a high office that General Wade has served in
23 with distinction now for the last eleven months. General Wade I
24 believe to be the right leader at the right time for the
25 California Army National guard. His organizational skills, his
26 passion for service, his moral courage, and his great desire to
27 see through the reforms needed to move the Military Department
28 forward, I think, are just what we need right now at this time.

So, I believe that a vote to confirm General Wade is a vote to continue the positive momentum that he has pushed forward in the Military Department.

Thank you very much for this opportunity to address your Committee, Mr. Chairman.

CHAIRMAN PERATA: Thank you, Mr. Assemblyman.

I just wanted to know, did you get credit in those 23 years for Cub Scouts and Boy Scouts?

ASSEMBLY MEMBER DE VORE: Thank you very much for your comments.

If my wife is present, she will not much appreciate that, because every time I get carded, I also let her know that, and she tells me every time that it's a joke.

I'm 44, so I joined when I was 20.

I very much appreciate the comment, though, Mr. Chairman.

CHAIRMAN PERATA: Do you want equal time?

[Laughter.]

CHAIRMAN PERATA: Thank you.

General Wade, welcome.

GENERAL WADE: Thank you, Mr. Chairman.

Mr. Chairman, distinguished Members of the Committee, thank you for the opportunity to speak with you today.

I come before you today not only to seek your vote and confirmation as the Adjutant General for the California National Guard, but also to speak to you about issues vital to the future of your National Guard.

The California National Guard found itself in a changed world after the events of September the 11th, 2001. Since then, your Guard has deployed over 21,000 personnel worldwide. Members of your Guard have served with distinction and honor in all the major theaters of operation around the world. Your Guard sent members to Operation Iraqi Freedom, and also the Operation Enduring Freedom in Afganistan. Your Guard fulfilled NATO peacekeeping missions in the Balkans and supplemented active duty forces in both Europe and Korea. And your Guard continues to fulfill its Partnership for Peace mission in Ukraine.

As a militia, your National Guard was called to protect critical assets throughout the Western United States, assist with disaster relief in the Gulf States, and is now serving on the Southwest Border. And, of course, we're now in the airports once again. Through all this, your Guard remains ready to answer the call should any disaster strike. We are strong; we are capable, and we are ready, and we have never failed to perform a single mission.

In spite of this success, the California National Guard has been the subject of recent scrutiny. I'm the fourth person to serve in this position in the past five years. You can be assured that I'm focusing my energies on assessing our strengths and correcting systemic deficiencies where they exist.

To that end, I have undertaken a comprehensive reform program. To begin that program, I directed and supervised the development of a detailed strategic plan, a road

map, if you will, for the way ahead. A key component of that plan is our mission, and our mission is clear: provide trained and ready forces for federal mobilization as well as state emergencies.

I'd like to take a few minutes to highlight some of the areas of reform that support the strategic plan and the mission that I must accomplish. Let me begin with transformation.

Change has been a constant for us for nearly two decades, something that has become the new normal for our National Guard. Since the end of the Cold War, the National Guard's been transforming from a strategic reserve into a globally deployable operational force. And since my appointment, I made transformation one of my priorities.

I started California's transformation in my own headquarters. I directed the reorganization of the Military Department, directing the elimination of three of the five Divisions at the headquarters that made the California Military Department a stove pipe organization. And I created and employed a functioning Joint Staff.

But this transformation continues beyond the headquarters. I also directed a reorganization of the major commands of the California's Army National Guard, which reflects the transformation occurring in the active Army, to what they call brigade-centric organizations.

I'm also continuing to support efforts to transform Air National Guard units from legacy air support missions into the most relevant space operations and

network-centric missions of the future Air Force.

Finally, I directed capabilities-based planning to improve preparedness for state emergencies as well as readiness for federal requirements.

Next, I'd like to address the issues of personnel reform. There are seven different full-time employment personnel systems in the California National Guard, comprising over 23 percent of the total Guard strength. And all of those must be coordinated to support myriad state and federal missions. Any reform I make in one will have an impact on one or more of the other systems. Nonetheless, that reform is well underway.

All state active duty positions have been reviewed for appropriateness and with a view to align and balance the entire full-time state force. Additionally, we're looking to redistribute some of the active Guard and Reserve throughout the state and balance it with our federal technician force. These forces then need to be integrated with our state active duty and state civil service systems to round out support -- that rounds out support to the Guard's multiple state and federal mission.

This brings me to leadership. Good leadership is critical to the success of any organization, particularly one in transformation as we find ourselves. Among my first actions was to make significant leadership changes within my own headquarters. I brought in a new Assistant Adjutant General. I assigned a new Army Commander, and I promoted the Air Guard Commander to Major General, giving him the rank and authority to

affect change. I selected a new Chief of Staff, and I have a new Director of Operations, General Counsel, Public Information Officer, and Federal Inspector General.

Finally, I'd like the Committee to know that I fully support the establishment of an independent Inspector General.

Additionally, I sought and received authorization and funding to create our own State Internal Review Section within our headquarters.

Some have suggested that change is not happening fast enough. My philosophy is simple: not to change just for the sake of change, but rather to change for the better through a deliberate and thoughtful process that will bear lasting solutions.

The bottom line is, your Guard has accomplished great things. We are transforming and reforming as we continue to accomplish our mission.

As the Adjutant General, I'm dedicated to ensuring that civic leaders, citizens, as well as soldiers and airmen of the State of California have confidence in their Military Department and the California National Guard to complete this reformation and transformation.

I look forward to working with the Legislature to make these changes meaningful and lasting.

With that, I'm prepared to take your questions, sir.

CHAIRMAN PERATA: Thank you, General.

We have joining us Senator Dunn, who is about to

1 commence chairing his own committee. So, Senator Dunn, if you'd
2 like to make some comments.
3 SENATOR DUNN: I would. Thank you very much,
4 Mr. Chairman.
5 No questions for the General at all. Really a
6 comment to the Committee and to Committee staff.
7 I'm not here in opposition to the General's
8 confirmation, not at all. We've worked extensively with each
9 other over the past almost a year now. We've crossed swords
10 many times, most of it over exactly what the General identified,
11 and that is the speed of the reforms. I, of course, want them
12 yesterday, and he's got to deal with the realities of a very
13 large organization, but not on anything on the substantive side.
14 In fact, I've been very public in complimenting the General on
15 doing some of the reforms.
16 Because frankly, when he took the job, I don't
17 think for those who were in the know anybody was envious of it.
18 He took over an organization that is filled with incredibly
19 dedicated men and women, particularly the rank and file, but he
20 inherited a level of leadership at the most upper levels that
21 frankly was in disarray and very problematic.
22 And I know the General has had a difficult task
23 of sorting out who should remain and who shouldn't.
24 The only reason that I am here, Mr. Chairman, is
25 for the following. This is old news for the General. He
26 doesn't have to take any notes on this one at all.
27 Most of the problems that he inherited, that he's
28 had to deal with, originated during General Eres' service as

1 Adjutant General. Those problems now were exposed in great
2 detail in a recent audit that was released and, I know,
3 addressed in front of the JLAC Committee yesterday, none of it
4 pointing fingers at General Wade, by the way. I just wanted to
5 make sure this Committee is well aware of that.
6 The cleanup after General Eres, though, has been
7 very problematic, not due to the talents of the interim Adjutant
8 General seeking confirmation today.
9 The one issue, however, that I want to make this
10 Committee aware of, because it hopefully won't extend too much
11 longer, and I'll make the Budgetary Committee familiar with it
12 as well, is General Eres took the leadership of the Guard into a
13 very bad place, some of which was -- nobody disputes -- was
14 illegal. Illegal units that were formed, illegal redirecting of
15 funding that occurred, particularly federal dollars, that the
16 General here has been desperately trying to clean up.
17 But General Eres did not do that alone. He had a
18 group of about four individuals that assisted every step of the
19 way that I believe were fully knowledgeable of what they were
20 doing at that time.
21 The General indicated that when he came on board
22 about a year ago, he made changes in leadership. He brought in
23 his own team and shifted some people out, and that is correct.
24 There is, however, still one individual that no longer sits in
25 the core of headquarters but still is in a very senior and
26 influential position that was part of, my words of course, the
27 Eres Cabal that, frankly, does not belong in that position.
28 I just want to make this Committee aware of it so

that it can monitor the situation in the coming months, and hopefully that situation can be resolved as well.

But again, I want to underscore, I'm not here in any respect in opposition to the General's confirmation. It's been great working with him, even though we've crossed swords at times, but that's the nature of the legislative branch and, obviously, keeping tabs on other departments, agencies, et cetera.

Thank you very much for your time, Mr. Chairman.

CHAIRMAN PERATA: Thank you, Senator.

GENERAL WADE: Thank you, Senator.

CHAIRMAN PERATA: General, there's some overview questions that I wanted to talk to you about.

I think it's safe to say, and you touched on it in your opening remarks, that the National Guard today has taken on a far different responsibility and dimension than it has in the past.

My first contact with the Guard came in 1968, I guess, during the Watts riots, when one of my good friend's father was a major. And I remember him driving down the street in uniform on his way to Watts. Actually, I didn't know these guys existed before that.

I lived a sheltered life, Catholic, Italian, you know. I didn't get out much.

[Laughter.]

CHAIRMAN PERATA: However, now you've got members of the Guard are in an active shooting war in a country that

1 looks like it's more and more in full civil rebellion. I would
2 guess that many people serving there probably are asking, why,
3 what are we doing, what am I doing.
4 We have the entire issue of terrorism that wasn't
5 on the windshield four or five years ago to the degree that it
6 is today.
7 And then I note that the auditor said that the
8 Guard is having difficulty recruiting, 30 percent down. I'm
9 wondering, is it because of the nature of the jobs changing, or
10 do you have any idea, or suspicions, or hints?
11 GENERAL WADE: I had the chance to address this
12 issue, Senator, yesterday in the JLAC hearing when we talked
13 about recruiting, retention and strength.
14 There are some states across the nation who are
15 doing better than others. In the Army Guard of California,
16 we're pretty close. We're within 90 percent of our authorized
17 strength. We're trying very hard.
18 Actually, our goal for this year, we're at 101
19 percent of our goal that was given to us by National Guard
20 Bureau, but we're only 90 percent of where we want to be, and
21 that's to grow. And the reason we want to grow a little bit
22 each year is by showing the ability to grow to a greater
23 strength, then that gives us the ability to go back to the Army
24 and bid on the force structure that would benefit this state.
25 Otherwise, to a certain extent, we're at their mercy and we get
26 the force structure they give us.
27 Some of the challenges that we have now, the
28 Guard has never in its almost 370-year existence has never

1 drafted. It's always been an all volunteer force, from December
2 13th, 1636, when it was first constituted in Boston Bay,
3 Massachusetts. So, we go strictly on volunteers. So, it's
4 always been a challenge. We don't benefit from the draft, as
5 would the Army Reserve, by getting folks that the regular Army
6 doesn't take.
7 Having said that, for decades one of the
8 things -- honestly, one of the draws to the Guard was, you
9 never have to worry about going overseas. That paradigm has
10 changed, quite honestly. As I said, we've gone from a strategic
11 reserve to an operational force post-Cold War, where it was
12 expected that any National Guard unit to go overseas would have
13 a year to train up and to get ready, get equipped, and we were
14 funded at that lower level because of that reason. That doesn't
15 happen.
16 As I said yesterday anecdotally, when I got the
17 call, I got the call that I was going to be mobilized; two
18 months later I found myself on active duty, on my way overseas.
19 So, the paradigm has switched, as I say, to an
20 operational force.
21 I think the realization that people can and will
22 serve overseas, the Army Force Generation Model says that
23 brigade-sized units will serve overseas one tour in every six
24 years. That is the plan. So, the face of the Guard has
25 changed. We will find ourselves deployed more and more.
26 I believe we maintain our strength, both
27 recruiting and retention, by two means. First and foremost, you
28 can't -- because we're a volunteer force, there's got to be a

lot of patriotism involved. People want to serve their state and nation.

Then secondly, they're looking for what's in it for me. It always comes down to what's in it for me, and they're looking for benefits and entitlements. They're looking for a way to go to college, have the government pay for it. They're looking for the retirement. They're looking for those other things that military service, both state and federal, bring with it.

CHAIRMAN PERATA: How combat ready, if you send a unit to Iraq, how combat ready are they?

GENERAL WADE: The system -- the system, once again, I'll go back to previous years where we're funded at a much lower level, what they call a FAD. And we're only supposed to be trained up to just the platoon level, in some cases, higher priorities, to a company level.

What they have is what they call post-mobilization training. After you were called to active duty, that is when you start training through the company to battalion to task force level. And so, that's why you have post-mobilization training.

And in my case, my brigade spent three months at Fort Lewis, where you take it from the individual and the small unit collective training, and you take up through those higher levels. That's where you put it all together. And it's designed that way.

So when you asked me are we combat ready, every soldier, every airman is combat ready in their basic skills,

1 what we now refer to as warrior tasks. After you mobilize,
2 that's when the active service, be it the Air Force or the Army
3 in our case, take those soldiers and airmen, and they hone those
4 individual and small unit level collective tasks to help them
5 learn how to work at a task force level.
6 CHAIRMAN PERATA: Now, when you get the job, it
7 would seem to me that the task of going to a shooting war in
8 Iraq is a little bit different than deploying Guardsmen to go to
9 the Oakland Airport for that kind of duty. That seems more
10 policing than military.
11 Do you train people now routinely to go and guard
12 the bridges?
13 GENERAL WADE: Well, what we do is, we call on
14 those basic skills that the military gives them anyway, because
15 going back to 2001, when they put the Guard in airports for
16 eight months, the same as now, depending on what they want us to
17 do, we use those same skills: Patrolling, sentry duty, manning
18 the guard post, observation of people based on what law
19 enforcement wants us to look for, assisting in security.
20 Those are basic military skills, Senator.
21 CHAIRMAN PERATA: Questions from others?
22 Anybody in the audience, those in favor of the
23 nominee.
24 SENATOR BATTIN: Mr. Chairman, if I might as they
25 come up. Actually, if I could get Colonel Freeman to come up
26 first.
27 As I had expressed over, I guess, the last couple
28 of years, I had some serious concerns and some frustration over

1 the fact that we had seen the turnover in the Guard at such a
2 high level at the top.
3 And so, when this opening came up, I did
4 something that I had not done with any nominee that we have had
5 before us, which is, I convened a group to help me, first off,
6 suggest to the Governor who would be the right person for the
7 job. And secondly, when the Governor made the appointment, to
8 make sure that he was the right person.
9 My task force consisted of General Herb Temple,
10 who had the distinction of being the Adjutant General of
11 California and then going to Washington, D.C. with
12 then-President Reagan and running the National Guard in the
13 United States for President Reagan and President Bush the elder.
14 Then we had General Thrasher on it as well, who
15 was an Adjutant General, and then Colonel Tom Freeman, who put
16 the three together.
17 They sent a very detailed list of questions to
18 General Wade. I actually, when I saw them, I said, "Oh, gosh.
19 I'm sorry." I mean, they were very thorough. They vetted him.
20 They spent hours with him talking. They took their job very
21 seriously, and I thank them for that.
22 And I told them, and I informed the
23 administration when this process started, that I was going to
24 follow their recommendation. If they thought that General Wade
25 was a fine man, fit for the job, I would him. If they did not,
26 then I would not.
27 And Mr. Freeman is here to testify on behalf of
28 General Wade. I appreciate him going first.

CHAIRMAN PERATA: Certainly.

COLONEL FREEMAN: Good afternoon. Thank you, Mr. Chairman and Members of the Rules Committee.

My name is Tom Freeman, and I'm the Chair of the California National Guard Confirmation Task Force, which thoroughly reviewed and investigated General Wade for his appointment as the Adjutant General of California at the request of Senator Battin.

We're pleased to inform the Committee that an in-depth interview with General Wade was conducted, and those were multiple. He answered 50 questions that were from our committee and another 30 supplied by the National Guard Association of California. These questions were extremely hard-hitting. They tackled every single issue that many of the Members have heard about.

General Wade answered those completely, thoroughly, honestly, and has convinced us through his many years of service with the California National Guard that he is eminently qualified to be confirmed by this Committee today.

And as I said, we have addressed every single issue that you have heard about in your offices, read about in the newspapers. And we believe that this gentleman's honesty and integrity is above reproach, and he's exceptionally well qualified. He's one of only two Adjutant Generals in California that have commanded troops in a field on foreign soil and been activated to do that as a Brigadier General overseas.

Governor Schwarzenegger made an outstanding selection here. And after completing that review, we believe

that he is the gentleman that should lead the California National Guard.

And as the Assemblyman mentioned earlier, General Wade has taken a particularly high visibility leadership role in the area that's very vital to all men and women who serve in uniform, whether it's on the active duty side, or on the Reserve Guard, or even the State Military Reserve side. And that is, he has been a presence, and a force, and an advocate for the families.

There are 20 California Guardsmen who've lost their lives during this conflict overseas. He's been there for every single family that has lost a loved one while he's been the Adjutant General. And that's extremely important to the families.

And as our state, our Governor and this body also honor those soldiers that have lost their lives, it's important to the families that they have an Adjutant General and a staff that support the troops and are there for the families.

And the issue of reforming the State Headquarters, he is already undertaking that. And specifically I'm referring to the state active duty positions that there has been much information shared on, those state active duty positions which have been under review. The General tackled that immediately and now has a task force reviewing every single position. And before a new state active duty position is created or filled, the General will review that with that task force to make -- with that task force to make sure that that position is needed.

1 And I think those are some of the reforms that
2 he's implemented, on top of aggressively addressing the State
3 Audit, which he did in committee yesterday. But he is already
4 answering those questions and doing a superb job.
5 For those reasons and many, many more, and time
6 prohibits me from going on, Mr. Chairman, Mr. Vice Chairman and
7 Members, we recommend unanimously that you give him favorable
8 consideration and appoint him to serve as California's 44th
9 Adjutant General.
10 Thank you.
11 CHAIRMAN PERATA: Thank you, sir.
12 MR. CONATY: Mr. Chairman and Members, Pete
13 Conaty, representing the California State Commanders Veterans
14 Council, 18 veterans organizations in the state. I also spent
15 21 years in the Army and served under lots and lots of generals,
16 so I know quite a bit about generals and about leadership.
17 I work directly with General Wade on numerous
18 issues on behalf of my veterans clients since he was appointed.
19 He is the first Adjutant General in recent memory to reach out
20 to the veterans community and to say, "What can we do together
21 to help California's National Guardsmen and returning servicemen
22 and women get the benefits they deserve?" And this has been
23 very refreshing. We are working on several initiatives.
24 I also represent the California State Military
25 Museum in Old Sacramento. And he is the first Adjutant General
26 in recent memory to visit there. We're going to have a ceremony
27 on September 11th, a Wall of Honor, honoring those who have
28 given their lives from California in the War on Terror.

I'd like to elaborate just a little bit on what Assemblyman DeVore brought up, and that has been that no state agency has been as impacted since 9/11 than any other state agency. They have a dual mission, a federal mission and a state mission.

We have the Guard called up after 9/11. They have contributed men and women to the war in Afganistan. They've contributed men and women to the war in Iraq. They've contributed men and women to peacekeeping operations. They have responded to Katrina with 1300 men and women. They have stationed the National Guard members at the border, and the recent terror alert, where they sent troops to the airports.

But General Wade can't do the job. I sat in -- I didn't sit in the JLAC hearing, but I watched the tape for two hours last night. And I'm so glad you brought up recruiting and retention, because he can't do the job unless he's given the tools to do it.

We are currently short 5,000 National Guard members. We are authorized 25,000. We are at 20. Those 20,000 bring over $600,000 dollars in payroll to the State of California. If we were to get at our full strength of another 5,000, that would be an additional 200,000 Guard members that we would have $200,000 in payroll, and we'd have 5,000 more Guard members that could respond to our state missions.

California ranks in the bottom of all states that give benefits and incentives to their National Guard members. If we want to have a force that can respond to state and federal missions, we have to pick up and offer benefits to the men and

1 women of our National Guard.

2 Thank you very much.

3 CHAIRMAN PERATA: Thank you.

4 MR. LOVELL: Mr. Chairman, Members of the

5 Committee, my name is John Lovell, and I'm representing the

6 California Narcotics Officers Association today. We have 7,000

7 members statewide. We enforce California's controlled substance

8 laws. It's very dangerous work.

9 If you look over at the at Peace Officer Memorial

10 Wall, you'll find that 80 of the names, including two of our

11 past Presidents, are CNOA members killed in the line of duty.

12 Normally, we don't get involved in these

13 confirmation hearings. I don't think you've ever seen me here

14 before on a bill, as opposed to Public Safety Committee. But

15 we're making an exception in this case because of Major General

16 Wade's proven track record of support of efforts to suppress

17 illegal drug trafficking.

18 CNOA is a major training organization in the

19 state. We train over 200,000 hours a year. And while working

20 at the Counter Drug Program of the California National Guard

21 Headquarters, Major General Wade actually helped with logistical

22 support and instructional support for our training programs,

23 which are very vital.

24 The other thing we do at CNOA is, we are very

25 committed to a task force approach in drug enforcement. It's

26 not glamorous. It doesn't bring glory to any individual agency,

27 but it's effective. And Major General Wade has been committed

28 to the task force approach, has even lent National Guard

1 personnel to those efforts. There are National Guard personnel
2 in a number of task forces in major part due to Major General
3 Wade's commitment.
4 California Narcotic Officers Association strongly
5 supports his confirmation. This is the kind of leader who
6 thinks outside the box, who works cooperatively with other
7 agencies, who we feel is needed. This is someone who ought to
8 be a public servant.
9 Thank you.
10 MR. ZELL: Mr. Chairman, ladies and gentlemen,
11 my name is John Zell. I'm a retired Marine Corps Master Gunnery
12 Sergeant and have known Major General Wade since November,
13 2002.
14 I'm a fifth generation Californian, and I've
15 devoted 25 years of my life to serving our country in the United
16 States Marine Corps.
17 I have worked with many generals in Korea,
18 Thailand, Japan, Philippines, and within the United States. And
19 I can say from personal experience, General Wade is one of the
20 best.
21 General Wade is a good and honest man. He always
22 works his very best to accomplish the mission and support his
23 troops. He understands that the mission must be accomplished,
24 and to do that he needs the full support and ability of his
25 staff to accomplish that mission.
26 He has always fought hard for his people,
27 regardless if they were military or civilian. As a leader,
28 General Wade worked hard to train his employees to work and

1 interact as a team. He encouraged them to take initiative and
2 take responsibility for their actions. He ensures that
3 assignments -- assigned tasks are understood, supervised, and
4 accomplished. He would always inspect what he expected from his
5 team.
6 General Wade treats people like family. It did
7 not matter whether they -- it didn't matter what their race,
8 color, creed, or lifestyle was. Always, everyone was always
9 treated the same, with dignity and respect.
10 Respect, fair and equitable treatment was what --
11 is what he commanded and demanded from everyone, especially
12 those in supervisory roles. When a leader expects employees to
13 take responsibility for their own actions, the command will
14 always have disgruntled employees. There are those that have a
15 difficult time understanding the full concept of pull your own
16 weight and do your fair share of the work.
17 Equality among staff also means not overburdening
18 others to make up someone's inability to perform the full range
19 of their tasks.
20 In reflecting back on my time in the Marine
21 Corps, when someone would file a complaint against one of my
22 military policemen, we would investigate the allegation. And if
23 we found the allegation to have no merit, the person sometimes
24 got angry and would create static, spread rumors, and bend or
25 twist the truth in order to discredit the command and the
26 department.
27 From my experience, I have found that people,
28 when they get passed over for promotions, find themselves in

1 trouble, or not getting the attention they want or need, they
2 have to transfer or project their frustrations elsewhere. This
3 is just human nature.
4 The problem is, that displacement or deflection
5 tends to go up the chain of command.
6 General Wade gained my full personal and
7 professional respect and trust very shortly after our meeting.
8 My respect and trust for him has never waivered because all of
9 his intentions and actions were putting the entire team as a
10 priority while accomplishing the mission.
11 He has always taken the position -- he has always
12 taken his position very serious, and has full attention -- and
13 has his attention on protecting and maintaining national
14 security. I have seen General Wade under attack through the
15 World Wide Web, and I fully -- and I understand fully the
16 responsibilities and scrutinies a person must endure and be
17 subject to when holding a high profile position in the public
18 eye.
19 In the Marine Corps, one who emits all the
20 leadership traits and principles of the Corps is called a
21 Marine's Marine. I am proud to call General Wade a Marine's
22 Marine. And I would work under his command at any time.
23 Thank you.
24 CHAIRMAN PERATA: Thank you, sir.
25 MS. SEGURA: Good afternoon, Mr. Chairman,
26 Committee. My name is Laura Segura. I am the Chairman and the
27 Executive Chief Officer of the National Teen Leadership Program.
28 What we do is run leadership programs for high school teenagers.

1 Our program has been in existence for 15 years.
2 And for the last 12 of those years, our organization has had the
3 strong support of the California National Guard.
4 As you alluded to previously, it's obvious that
5 you realize that the perception of the National Guard to the
6 general population has been one of weekend warriors, as well as
7 those called to serve during natural disasters or local unrest.
8 More recently, our Guard members are deployed to
9 airports and borders to assist with Homeland Security, and
10 internationally, where they are giving their lives to ensure a
11 world that we can feel safe to raise our children in.
12 This is most certainly not an easy time for the
13 Adjutant General. With all this going on in the world, and only
14 so many hours in a day, I would think it would be easy to
15 prioritize each serious, life-threatening event, and place at
16 its lowest priority the work the Guard does with the elementary
17 through high school students in their War Against Drugs.
18 At every closing program, I share with our
19 audience, and that's approximately 12-15,000 people to date, the
20 good work that the Guard is doing by supporting programs like
21 ours, and the unnoticed work they are doing in our schools and
22 with our young people. Without the support of General Wade and
23 the California National Guard, our programs would not exist.
24 I first met General Wade when he was the
25 commander of the Counter Drug Task Force in 2000. He became
26 active with our organization immediately then, but could have
27 easily stepped aside when he left briefly to handle airport
28 security. And certainly, we would have understood if he had

1 stepped aside when he commanded the troops in Kosovo, and given
2 huge demands of running the California National Guard as
3 Adjutant General, we would have understood if he was too busy to
4 stay involved with our little nonprofit.
5 General Wade has rarely missed a board meeting
6 during the six years we have known him, and has offered advice
7 and counsel frequently during his time overseas. He has been
8 the face representing the National Guard at our events,
9 personalizing the good work that the Guard does to the general
10 public.
11 Of all the Adjutant Generals that I have had the
12 pleasure of working with, and there have been four, General Wade
13 has been the most involved and most active with our organization
14 and others, even though his tenure has surely been the most
15 fraught with serious issues that involve the lives of our
16 soldiers.
17 General Wade recognizes that working with youth,
18 building their leadership potential, and instilling within them
19 a resistance to negative peer pressure is, and I quote General
20 Wade, "The cheapest insurance policy this country could ever
21 have to indemnify us against internal domestic problems, and arm
22 us to handle intellectual, moral and democratic threats from
23 inside and outside our borders."
24 Under his direction, nearly 500 young men and
25 women, the sons and daughters of Guard families, as well as many
26 at-risk youth from other Guard supported programs, have been
27 able to attend our leadership camps. Our organization exists
28 because of his active involvement, involvement that mostly goes

1 unnoticed and unrecognized.

2 The true character of a man is not measured by

3 what the people see when he is in the public eye, but what he

4 does when no one or very few are looking on.

5 General Wade is a man of conviction and

6 character, and today I speak to you on behalf of over 25,000

7 alumni, parents, and supporters that make up the National Teen

8 Leadership Program. I am proud to know him, proud to be a part

9 of an organization that he supports, and I fully support his

10 confirmation to your Army National Guard.

11 Thank you very much.

12 CHAIRMAN PERATA: Thank you.

13 GENERAL BRANDT: Mr. Chairman, Members of the

14 Committee, my name Robert J. Brandt. I was the Assistant

15 Adjutant General of the California National Guard and Commander

16 of the California National Guard from 1992 to 1999.

17 I had a great deal of responsibilities for the

18 National Guard during that period of time, and one of my goals

19 was to qualify the most professional senior leaders for the

20 National Guard.

21 I've known Bill Wade for over 30 years. And he

22 was one of those who was selected by the boards that we held in

23 the Military Department to move up into command positions and

24 higher levels of responsibility.

25 I served two tours in Vietnam as a helicopter

26 pilot. I know what Bill Wade is going through now, in trying to

27 handle all the responsibilities he has as Adjutant General.

28 I just want each of you to know that I'm here as

combat veteran and a veteran of the California National Guard for 45 years, that this is the guy you need leading your California National Guard. And I just cannot stress strongly enough that he be confirmed.

Thank you very much.

CHAIRMAN PERATA: Thank you, General.

MS. NASH-DURHAM: Good afternoon. My name is Lisa Nash-Durham, and I'm here freely on General Wade's behalf for a testimonial in his confirmation.

I don't bear a lot of stripes, or ropes, or anything. I'm just a regular private citizen who he has impacted.

My professional relationship with General Wade has been one with great respect. General Wade has a wonderful, wonderful leadership. I personally had a chance to see first-hand how his leadership skills were executed.

I have no direct knowledge of ever hearing General Wade being abrupt, or ignoring, or any member of his staff or anyone below. I would say that it would be strangely out of his character to do so. I've never witnessed General Wade ever dismissing anything that has come to his attention of any kind or any issue.

He proved to me to be concerned with any and all issues that has come to his attention. I can truly say I trusted wholeheartedly, and still trust, General Wade in his leadership.

As my boss, General Wade saw something in me. He understood me. He showed himself to be more than just a boss.

1 General Wade showed himself to be caring and never afraid to be
2 human. He took the time to get to know me.
3 As a strong Black female, I have learned that
4 have I've got to work twice as hard. Mr. Wade has always made
5 my feel that all of my work has never been ignored or gone
6 unrecognized.
7 I can recognize the difference between someone
8 who superficially cares and someone who genuinely cares.
9 Mr. Wade has proved to me that he genuinely cared about my life,
10 my career, and my personal struggles.
11 I've been reprimanded by General Wade, which,
12 incidentally, is a personal struggle, but yet he was
13 compassionate and my mistake. He made sure that I understood
14 what I did wrong, the results of my decision, and how to improve
15 it. Not once did I ever feel intimidated by Mr. Wade. Once I
16 understood and acknowledged what I had to do, we both moved on.
17 This is truly leadership, having the big picture
18 in mind while dealing with those who only have a small portion
19 of that big picture, in the views and execution, and having to
20 deal with the differences in personalities.
21 Great leadership brings out the best of those who
22 follow. Great leaders understand that they would be nowhere
23 without the help of those who surround them.
24 My experience is that General Wade allowed each
25 member of his staff to have their own way of performing each
26 task without micromanaging. He trusted and he supported his
27 staff without compromising the end result of the that big
28 picture.

1 I'm very happy to be here today to tell you
2 first-hand what kind of leader, what kind of person Mr. General
3 Wade is, and remains as a strong leader today.
4 I'll hold him with the greatest integrity, with
5 the greatest honesty. And he's compassionate as well as
6 decisive. I truly miss working with General Wade, for he has
7 made a lasting impression to me to always strive to be better,
8 to want better, and to seek out those who desire to be better.
9 Ladies and gentlemen, thank you for your time.
10 CHAIRMAN PERATA: They need some recruits. You
11 can still work with him, you know.
12 [Laughter.]
13 CHAIRMAN PERATA: Yes, sir.
14 MR. ROSS: Good afternoon, ladies and gentlemen.
15 My name is Edward Ross. I'm currently with TSA.
16 And I know that you've heard -- there's a lot of
17 suits in here with very pretty ribbons, that I have not ever
18 served in the military. I am your Joe Public, if you want to
19 call it that.
20 I got to meet, and I called him Mr. Wade,
21 unfortunately. That's what he is to me, is Mr. Wade, not
22 General Wade.
23 At TSA, I had a very unique opportunity. I was a
24 screener working in the lead position. I worked on the floor,
25 then I worked downstairs in the office, so I got to see really
26 both ends, working out there and working with the screener, and
27 then coming down there, working with his staff, and trying to
28 get a very, very difficult job to get that organization up and

1 running, and to maintain the high security that he demanded.
2 He was an inspiration at times. He was amazing
3 at times. Sometimes you shook your head and went, "Man, he's
4 pissed, and he's going to get it done," because he did go out
5 there and really fight very hard for all of us there on the
6 line. A lot of us didn't see that. He stayed down, as we
7 called it, in the dungeon. We were at the very bottom.
8 There is a basement, believe it or not, at the
9 airport, and that's where we were placed. It was very tough
10 down there.
11 He had a lot of things coming at him from the
12 airport, from headquarters, and just the job itself, from the
13 employees. There were a lot of difficult decisions.
14 I never saw him waiver once as far as facing
15 those decisions. Might not have agreed with him, but that's
16 what -- that's the reason why he was there, is to make those
17 kinds of decisions. He did what we needed to happen.
18 And I'm very proud to know him. I'm very proud
19 as a businessman. I came with 15 years of project management in
20 IT, right into the screening force. I've seen a lot of
21 organizations, from very small to very big. All of a sudden, he
22 got a very young, almost nonexistent, very big organization,
23 very, very fast. So that had a lot of very unique challenges at
24 that time, and a lot of different pressures from a lot of
25 different people.
26 I'm proud to say that I worked for him. I'm also
27 hopeful that if the position opens up again a SMF, that he will
28 be tired of wearing this uniform and come on back and be there,

1 and work for us back there. I would look forward to that, and
2 that would put a pretty big smile on my face if he came back and
3 worked with us down there.
4 CHAIRMAN PERATA: Thank you.
5 MR. WAHL: Yes, good afternoon. I speak with
6 two hats for the enlisted soldiers and the senior enlisted
7 soldiers of California National Guard, both Air and the Army
8 side of the house.
9 My name is Master Sergeant Ken Wahl. I'm
10 retired. I'm the President of the Association, Sergeant Majors
11 Association.
12 And I'd like to request the favorable
13 consideration for General Wade as the next Adjutant of the State
14 of California.
15 The Sergeant Majors Association is an
16 organization of senior enlisted soldiers and airmen of the
17 California National Guard that promotes image and
18 professionalism of its members. We have helped the military
19 education system of the enlisted soldiers, promoted the well
20 being of soldiers and airmen, and have provided the backbone for
21 leadership for all the Adjutant Generals in the State of
22 California.
23 Additionally, the Association provides support
24 for soldiers and their families, airmen and their families in
25 times of financial emergencies through our Chaplain's Fund.
26 Right now, it has some high visibility, the funding for soldiers
27 that are in a financial bind. And fortunately, the Sergeant
28 Majors Association has come forward and helped a lot of soldiers

in emergency situations.

General Wade is a great supporter of our association and the recipients of those funds.

Personally, and I've known General Wade to be an honest and trustworthy leader. I believe that his abilities and forthrightness are characteristics that will contribute to the professional leadership of the California National Guard.

General Wade has always upheld the seven Army values that all members admire in a leader: loyalty, duty, respect, self-service, honor, integrity, and personal courage.

Thank you.

CHAIRMAN PERATA: Thank you, sir.

MR. ELLIS: Mr. Chairman, Committee Members, I'm Mike Ellis. I'm a retired Chief Warrant Officer 5 from the Army National Guard. I retired this January, after 42 years of service with the Army National Guard.

I was activated several times with the Army National Guard for federal active duty for Vietnam in 1968, for Desert Storm in 1990. I've served in Iraq. I've served in Kuwait. I've served throughout the United States and throughout the world in different missions.

I've known General Wade for approximately 30 years, and have dealt a lot with his commands and personnel under his commands. I can tell you that in my experience as a combat veteran, as a veteran of several different emergencies in California, I'd find no better person than General Wade to handle the California National Guard.

Thank you.

1 CHAIRMAN PERATA: Thank you, sir.

2 MR. MARTINEZ: Good afternoon, Mr. Chairman,
3 Members of this Committee. My name is Richard Martinez. I'm a
4 retired Army Sergeant Major, 40 years of service, 25 with the
5 National Guard.

6 From my beginning, I worked and served under many
7 generals, and I know the world that it was when I came in, in
8 1950, as you well know. Some of you may not have been around at
9 that time. But I've served under many generals, and I know
10 about General Wade. Like I said, I served under many generals.

11 And I know all about him, and what he has done,
12 and what his mission is. And I've heard this from some of his
13 officers and enlisted NCOs. And he is the man for the job.

14 I've talked to other generals that know him, and
15 I am asking, recommending, that he be confirmed for -- to take
16 over the division.

17 That's all I've got to say.

18 CHAIRMAN PERATA: Thank you.

19 COLONEL APPLING: Mr. Chairman, Senators, my
20 name is David Appling, and I'm a retired Army Colonel. And I'm
21 the President of the Sixth Region of the Association of the
22 United States Army, or AUSA, which is the Army's support and
23 educational group.

24 I'll restrict myself to comments that have not
25 already been made.

26 First of all, I have known General Wade for 22
27 years, and I have worked with him, on and off, in every military
28 grade between major and major general.

1 I just want to say in that connection that in
2 every one of those grades, he has displayed the vision, the
3 leadership, the integrity, the commitment, the management skills
4 that you have heard described for you today in his current
5 position.
6 As a Region President of a six-state region of
7 the Association, I have the opportunity to speak with Guard
8 members in and out of the state at every level. I interface on
9 a regular basis with adjutant generals and senior staffs in
10 Oregon, Washington, Idaho, Nevada, Montana, as well as
11 California. And as a trustee of AUSA, I also have the
12 opportunity to interface with General Wade's peers and
13 counterparts in Washington that is active component of Army
14 Reserve as well as, of course, the National Guard.
15 At the troop level, General Wade I can say is
16 universally respected and liked. I don't know whether he's
17 loved or not, but he is respected, and he is liked, which is all
18 you can ask of a leader.
19 He has done, I think, a tremendous job for the
20 soldier, for the National Guard soldier, in his eleven months as
21 the Adjutant General of our state.
22 I can echo this in other states as well. General
23 Wade is universally respected in the states that I mentioned
24 before, as well as by and with his counterparts in Washington
25 and throughout the active Army, where ever it may serve.
26 I could, as I said, echo many of the things that
27 other people have said. In the interest of time, I will just
28 say, this man is a soldier's soldier, and he is what our

1 National Guard needs in these troubled times.

2 Mr. Chairman, thank you very much.

3 CHAIRMAN PERATA: Thank you, sir.

4 MS. KENNEDY: Good afternoon. My name is Anita

5 Kennedy, and I'm here as a citizen.

6 I have had the privilege and honor of working

7 under General Wade's leadership, and I find him to be nothing

8 other than professional. And in meeting the demands of

9 security, in which I worked with him, I found him to always be

10 decisive and fair in his judgments when it came to dealing with

11 others. He is always supportive.

12 I always looked forward to going to work. I

13 found that the environment there was always a friendly and

14 welcoming one, and I very much miss having his presence there.

15 I found that not once do I remember seeing him

16 have a loss of his professional demeanor in dealing with issues

17 and people. Sometimes there were some very tough issues ahead,

18 and he conducted himself as professional and a gentleman in all

19 of those cases.

20 I just consider it privilege and honor to know

21 him and to have worked under his leadership, and would very much

22 look forward to doing that again.

23 CHAIRMAN PERATA: Thank you.

24 Yes, sir.

25 MR. BERNATZ: Mr. Chairman, Members of the

26 Committee, good afternoon. My name is John Bernatz. I'm a

27 retired Colonel in the California Army National Guard.

28 And I'm here for one purpose today, and that's to

1 urge the confirmation of Major General Bill Wade as the Adjutant
2 General of the State of California. I do this for two reasons.
3 First, I'm a member of the Executive Board of the
4 National Guard Association of California. And I would suggest
5 to you that the bulk of our membership is highly supportive of
6 General Wade as the Adjutant General, despite the fact that the
7 Board took a vote that we would not, as a body, support
8 candidates or nominees. As individuals, most of us, all but a
9 very few, are strongly in support of General Bill Wade to be the
10 Adjutant General.
11 Secondly, I've known Bill Wade for 20 years
12 plus. He and I were battalion commanders together. We went
13 through rotations at the National Training Center at Fort Irwin
14 together. We assumed commands of our brigades on the same
15 weekends. Our dates of rank of colonel, I think, was within a
16 day of each other.
17 He took command of the state's Counter Drug Task
18 Force from me, after I had served there for a period of time. I
19 will tell you that as a result of which, I probably know Bill
20 Wade as a friend, as a fellow professional, and certainly as a
21 competitor for a period of time as well as anybody in this room,
22 with the possible exception of his wife. At least I hope that
23 would be true.
24 I urge the Committee to vote to confirm Major
25 General Bill Wade as the Adjutant General of the State of
26 California. Thank you.
27 CHAIRMAN PERATA: Thank you, sir.
28 Anyone here in opposition? Please come forward.

1 MS. LUSSON: Hi. My name is Kathleen Lusson.
2 I'd like to give you a little bit of background about me.
3 I have a BA in communication studies, with
4 emphasis on cross-cultural communication; post grad work in
5 organizational communication; MA in education with
6 multi-culturalism -- emphasis on multi-culturalism.
7 I have a security background. My husband had an
8 overseas company, and we worked with embassies. We were
9 domiciled overseas. I have ten years' experience with security
10 while living in foreign countries.
11 I studied Arabic with the Peace Corps, acquired a
12 working knowledge of the language. Worked with the Defense and
13 State Department in conjunction with the Yemeni Military Sanaa,
14 Yemen, teaching English with the Defense Language Institute from
15 Lackland Air Force Base for six years.
16 After returning to America and after 9/11, I
17 wanted to give something back to my country. I was recruited by
18 TSA while working at the airport in Sacramento as a customer
19 service agent for a domestic carrier as well as an international
20 air carrier. I was certified as a ground security coordinator,
21 where I worked with the National Guard and the Sacramento
22 Sheriffs, overseeing the security at the airport.
23 TSA advertised family-friendly policies with
24 flexible working hours. As a single parent, I had scheduling
25 issues while working with TSA and came to know General Wade as
26 our Federal Security Director.
27 Our human resource director arranged a meeting,
28 and I believe the Committee might have that paperwork somewhere,

1 with General Wade. I was told that my schedule would be changed
2 if I could provide supplemental documentation for General Wade
3 supporting the reasons for the necessary change. General Wade
4 called this particular meeting a hearing, setting an atmosphere
5 of intimidation and fear. This climate escalated throughout Mr.
6 Wade's command.
7 In this hearing, Mr. Wade interrogated me, asking
8 me many personal questions about my family and my personal
9 life. I supplied four personal documents from my children's
10 family and my personal life -- excuse me -- from my children's
11 doctor, counsellor, principal, and the on-site sheriff.
12 In our hearing, Mr. Wade joked that the documents
13 which I provided were really not for the purpose of remedying my
14 schedule problems as I had been told, but rather to see if I was
15 telling the truth.
16 When I left the hearing I was ordered not to say
17 a word to anyone. It seemed as though General Wade was running
18 some type of secret, patriarchal boys' club.
19 In other meetings, I have personally heard
20 General Wade make improper racial slurs, unsuitable remarks
21 regarding the gay community, insult co-workers, and use vulgar
22 language. I heard General Wade yell and name-call at
23 co-workers. One day while I was working on Lane One, and a co-
24 worker was working on the exit lane, I heard General Wade call
25 her -- call her an F-ing B.
26 As a result of the fact that I could not get my
27 schedule -- scheduling problems solved with TSA via General
28 Wade, I was left with no recourse but to file an EEO complaint.

1 Before filing my complaint, I wrote General Wade one more time,
2 referencing the above-mentioned hearing. I also submitted this
3 letter that I had written to Mr. Wade to the Committee. This
4 letter must have really made an impression on Mr. Wade, because
5 I began to feel like I was being targeted at work. From that
6 point on, I was harassed, humiliated, and singled out by
7 management.
8 I pleaded for help repeatedly with human
9 resources. Once I initiated the filing of the EEO complaint,
10 the EEO rep advised me to be forthright and inform General Wade
11 and Mr. Jeff Holmgren that I was filing the complaint. After
12 that, the harassment was nonstop.
13 At this time I would like to ask -- tell you that
14 management ordered supervisors to build cases against employees.
15 Please see the sworn affidavits under penalty of perjury of the
16 four submitted people, of Ms. Kesty, Afa Masaga. Who else?
17 Mr. Seghetti, and Mr. Stalk.
18 Unfortunately, my EEO cases were denied, and I'm
19 currently appealing them. The reason I lost my EEO case, I
20 believe, is because TSA could not provide any scheduling
21 documents, any time cards, or any notes in the promotional
22 process. TSA under General Wade's management was unable to
23 produce employee schedules.
24 I cannot demonstrate the numerous schedule
25 changes imposed upon me and the retaliation against me. I tell
26 you this story because it directly relates to General Wade's
27 management of TSA's administration at Sacramento Airport.
28 Thank you.

1 CHAIRMAN PERATA: Thank you.
2 Yes, sir.
3 MR. ARSENAULT: Good afternoon, Mr. Chairman and
4 honorable Committee Members.
5 Thank you for the opportunity to offer my
6 perspective and observations on the confirmation of Major
7 General William H. Wade, II, to the position of California
8 Adjutant General.
9 My name is Mark Arsenault. I'm a former enlisted
10 member of the United States Air Force and served in the Persian
11 Gulf during Operation Desert Storm. After leaving the military,
12 I entered the law enforcement profession as a nonsworn employee
13 and spent a year as a private investigator.
14 I've been in public service for most of my adult
15 life and continue to work in public service today. I have great
16 respect for men and women serving in our armed forces, and I
17 come here out of concern for the members of the California
18 National Guard should General Wade's appointment be confirmed.
19 During my testimony, I'll be making references to
20 various documents. I would refer the Committee to the documents
21 that I have provided to the Senate Rules Committee's Office of
22 Investigation.
23 My wife, Margaret, was hired by the
24 Transportation Security Administration in late 2002 and began
25 working at the Sacramento International Airport in October of
26 that year. General Wade was at that time the Federal Security
27 Director, or FSD, for TSA At Sacramento.
28 From the time she was hired, Margaret experienced

numerous problems with the agency and with the TSA managers at the airport, including two instances of assault and verbal threats by the same co-worker.

In 2003, my wife filed an EEO complaint against the agency, for which I was her designated representative. On September 2nd, 2003, my wife wrote a letter to United States Senator Diane Feinstein, outlining her complaints about the TSA management under FSD Wade at Sacramento International Airport. Senator Feinstein sent a letter to then-TSA Administrator, Admiral James M. Loy, initiating an official inquiry.

Wade's response under TSA seal contained false statements and omissions. Sworn testimony provided by managers who worked under Wade revealed that a manager was directed to collect documents relating to my wife's complaint. The manager later submitted his report of findings to FSD William Wade, who polished up the report, and those are his words. Evidence supporting Margaret's allegations were omitted by Wade in his written response. I will relate only a few examples.

Wade's letter states that security video tapes, quote, "prove categorically that there was no assault," unquote. Whereas, sworn testimony in the criminal report stated that a review of the security video was inconclusive.

Wade also claimed that there were no witnesses or proof of an assault or verbal threats, and that the complainant was -- I apologize -- the complaint was a, quote, "gross exaggeration of the facts," unquote. He characterized her allegations of retaliation as totally unfounded. The Sheriff's report, however contains the suspect's admission to making the

alleged comments.

Sworn testimony by Wade's own managers and a witness to the assault contradict Wade's statements as to photographs of the bruises my wife sustained as a result of the assault. This evidence was omitted by Wade in his written response.

Wade stated that my wife was given time off with pay to compose herself, although it was offered immediately following a meeting with FSD Wade and several of his managers, a meeting which I also attended.

During this meeting, three senior managers physically surrounded us in the office and blocked our access to the door. I witnessed Wade become very upset, yelling angrily at me and my wife. I witnessed one manager yell at my wife as he shook papers in her face and told her, quote, "The Sheriff's Department didn't find anything. It's closed. I have the report right here," unquote.

When my wife asked to see the report, she was denied.

Wade asserts that there's no evidence that a hostile work environment exists. The actions I witnessed that day contradict his assertion.

Wade also alleged that my wife was responsible for a security breach based on statements from a TSA screener and a TSA supervisor that were unsolicited. The allegation was brought to my wife's attention one month after the alleged incident.

Anyone who follows the news can appreciate the

1 security breach at an airport triggers an immediate response,
2 often resulting in an evacuation of the affected aircraft, if
3 not the entire terminal. Yet Wade's management required a full
4 month to address the allegation against my wife.
5 What's more, the aforementioned TSA supervisor
6 later contacted me via email. He stated, quote, "I was asked
7 from time to time to collect paperwork on concern individuals,
8 your wife being one of them," unquote. And, quote, "I was
9 directed by two certain management officials to perform those
10 actions and document those words with my name," unquote.
11 There are many other relevant details in the
12 documents I provided, too many to cover in the brief time I have
13 to speak.
14 General Wade has demonstrated his character by
15 submitting false statements in response to a Congressional
16 inquiry. Wade lied to a United States Senator while holding a
17 senior executive service position within the federal
18 government. If his personal values are such that he will lie to
19 the U.S. Congress, can he be trusted not to lie to the
20 California State Senate.
21 I urge the Committee Members to vote against the
22 confirmation of Major General William Wade.
23 Thank you. I'd be happy to answer any questions.
24 CHAIRMAN PERATA: Thank you, sir.
25 MS. ARSENAULT: Good afternoon, Mr. Chairman,
26 and honorable Committee Members.
27 Thank you for giving me an opportunity to speak
28 to you today about my experiences with Major General William

1 Wade and as I was employed with the Transportation Security
2 Administration when he was Federal Security Director of
3 Sacramento International Airport.
4 My name is Margaret Arsenault. I served in the
5 United States Air Force, and I have a degree in business
6 administration.
7 I was hired by the TSA's lead security screener
8 in 2002 and worked at Sacramento International Airport from
9 October, 2002 until June of 2005, when I resigned.
10 My husband, Mark, has already covered General
11 Wade's responses to the Congressional inquiry, as well as our
12 meeting with FSD Wade in his office in some detail in his
13 statement, so I will -- he has covered it in some detail, so I
14 will only say that I agree with his comments, and the documents
15 we provided speak for themselves.
16 In June of 2004, Federal Security Director Wade
17 held two townhall meetings for all TSA employees. The meetings
18 were discussed -- were to discuss EEOC policies, including TSA's
19 policy of zero tolerance for discrimination and harassment.
20 The Director of the TSA Office of Civil Rights
21 was also in attendance at one of the meetings. I know because I
22 sat next to her.
23 During the meeting, FSD Wade, William Wade, had
24 handed out several awards to male employees, commenting on how
25 many men had won awards. I heard Wade say, "I guess I'm going
26 to have to move to San Francisco." I took this statement to be
27 in reference to San Francisco's homosexual population. I found
28 the comment offensive and inappropriate, especially coming from

1 the FSD of our airport.

2 In the days following the townhall meetings,
3 several employees came to me as their lead and told me that they
4 heard FSD William Wade make inappropriate comments during the
5 meetings, including the San Francisco comment, and a statement
6 made to a black employee regarding "Driving Miss Daisy." The
7 employees were offended, but did not feel it was safe to
8 complain about the FSD. They asked for my advice. I told them
9 they could call the Director of TSA's Office of Civil Rights,
10 who was at one of our meetings. Most of the employees were
11 afraid of reprisal and didn't even take her number when I
12 offered it.

13 I later called the Director myself to complain,
14 but I believe no action was taken. At first she denied hearing
15 the comments. Later in the call, she said she did hear them,
16 but said, "I don't think that's what he meant," quoting her,
17 "and I'm sure he was just joking."

18 This is how our FSD and head of the Office of
19 Civil Rights treated the agency's zero tolerance policy. It was
20 clear to me and many others that the racist comments and sexual
21 harassment that many employees were subjected to created a
22 hostile work environment that FSD Wade was aware of and
23 condoned. Mr. Wade maintained a culture of fear and
24 intimidation among the TSA employees in Sacramento.

25 For example, I was told by a supervisor to time a
26 co-worker's bathroom breaks. It was apparent that the
27 management was reaching for anything to use against the
28 employee. The targeted co-worker, I later learned, had filed an

1 EEO complaint against the FSD Wade.

2 It was common knowledge among screeners that
3 management routinely worked against employees when it came to
4 filing paperwork, like workers comp claims, complaints, or any
5 paperwork that made FSD Wade look bad. I turned in a workers
6 comp claim for an on-the-job injury that was lost by the Human
7 Resource management, by our Human Resource Manager. I
8 resubmitted the paperwork on the same claim, and it, too, was
9 somehow lost.

10 I was the last female lead screener from my class
11 at Sacramento Airport that had not been promoted to supervisor.
12 After being passed over for promotion for the third time in a
13 row, a screening manager told me that I was seriously considered
14 for some positions, but you've already burned your bridges.

15 The culture of fear and intimidation was out of
16 control under Federal Security Director Wade. Complaints were
17 ignored and worse, covered up. To complain about Federal
18 Security Director Wade or one of his managers was the same as
19 pulling the plug on your federal career, especially if you were
20 a woman.

21 The culture and overall feeling changed after
22 current FSD took over and Mr. Wade left.

23 Due to my experience under FSD Wade, I believe he
24 lacks proper leadership qualities. I ask that you do not
25 confirm his appointment to Adjutant General of California
26 National Guard.

27 Thank you for your time.

28 CHAIRMAN PERATA: Thank you.

1 Anyone further? Pleasure of the Committee?

2 SENATOR BATTIN: Mr. Chairman, I have just have a

3 couple comments.

4 General Wade, sometimes these hearing seem like

5 they go on for a long time, and sometimes they go by real

6 quick. We have sat over the time that we have spent this

7 session, and we have listened to lots of people get confirmed.

8 We have heard people who criticized the conferees. Ninety-five

9 percent of the time they're legitimate policy disagreements, I

10 didn't like this decision.

11 I apologize to you that you had to have your

12 character besmirched. I also apologize to you that you have

13 gone through, I think, probably what is a personal trying time

14 here within the last couple of weeks, because suddenly out of

15 the blue, allegations were whispered about you. And that's just

16 not right.

17 It's not right for someone who has served his

18 country, who I don't even really believe sought this job, that

19 the job came to you. You were asked to serve, and you said that

20 you would. I appreciate that.

21 I just want to bring to the Members' attention,

22 because I know that not only did you go through having to defend

23 yourself, but the Senate Rules Committee staff also met with you

24 and wanted to go over those concerns and discuss.

25 We were given a memo from our staff from the

26 Senate Office of Research. I'll just read a couple of

27 highlights here. It does talk about Mr. Arsenault as the

28 administrator of a web site, www.TSA screeners.com, and his

1 wife, former employee. He, however, has never been employed by
2 the TSA. It goes on to say that his letter is critical, that it
3 makes two allegations. We heard those just now, that first you
4 lied and knowingly provided false statements in a letter to the
5 manage at TSA, and that you've made derogatory and
6 unprofessional comments at a TSA meeting.
7 After spending hours with you, and going through
8 all of the documents, the conclusions are reached:
9 "At this time the Senate Office of
10 Research is unable to determine
11 the truth of Mr. Arsenault's
12 claims. What follows is a list of
13 the reasons why [it] could not make
14 that determination.
15 "Mr. Arsenault was not
16 present at the meeting in which he
17 claims General Wade made derogatory
18 and unprofessional comments, rather
19 he says people who were present at
20 the meeting told him that this is
21 what General Wade said. He believes
22 them because he has 'no reason not
23 to believe my sources.'"
24 Next point:
25 "Besides Mr. Arsenault, no one has
26 come forward on their own to say
27 that they heard General Wade make
28 these comments. It is unknown who

1 the two ... are that Mr. Arsenault
2 volunteers to testify before the
3 Rules Committee. Also, to my
4 knowledge, no formal complaint was
5 made against General Wade for
6 saying these alleged inappropriate
7 comments during the TSA meeting."
8 Next point:
9 "Mr. Arsenault's claims that
10 General Wade lied relate solely to
11 actions surrounding an Equal
12 Employment Opportunity complaint
13 filed by Mr. Arsenault's wife.
14 The complaint was settled prior to
15 being heard by an administrative
16 judge. The terms of the settlement
17 are confidential."
18 And then finally:
19 "The evidence provided by
20 Mr. Arsenault does not support the
21 claim that General Wade lied or
22 knowingly provided false
23 statements with intent to deceive."
24 It's interesting to -- it's not interesting.
25 It's unfortunate that you've gone through all this scrutiny.
26 I mean, as your support came up, I announced to
27 the Chair and the Committee that I had done something
28 unprecedented in terms of my service here, which was, I convened

an investigative task force just to look at you, and we certainly did.

You went through that. You went through hours of meeting with the staff of the Senate Rules Committee.

Then you had these whisper campaigns come after you. Then you went through hours more.

I don't know if we've vetted anybody more than we have vetted you. And I wish it would have been on, the bad side of it, I wish it would have been on that we didn't like your decision here, or we didn't like your decision there. Honest policy disagreements are legitimate.

But trying to besmirch your character is not, especially when you wear the uniform of this country, and you've done combat operations, and you have put yourself on the line to protect us.

I just wanted to apologize for that.

And with that, Mr. Chair, I move the nomination.

CHAIRMAN PERATA: Thank you.

Yes, Senator Bowen.

SENATOR BOWEN: Mr. Chair, I'm not coming apart, but my microphone apparently is.

Don't laugh. We're writing your names down.

[Laughter.]

SENATOR BOWEN: Good afternoon.

GENERAL WADE: Good afternoon, Senator.

SENATOR BOWEN: I actually don't know, Senator Battin, anything about what you just talked about. I've never seen any list of questions. I have no knowledge of any other

1 procedure other than the one that we use in this room.
2 If you're somehow suggesting that it should be a
3 substitute for an actual public Rules Committee hearing, that
4 concerns me greatly. I don't know anything about that.
5 It's my understanding just in --
6 SENATOR BATTIN: I'm sorry. I don't understand
7 what you're --
8 SENATOR BOWEN: You referenced in your comments
9 that you convened a --
10 SENATOR BATTIN: Oh, I did, and you weren't here
11 at the beginning.
12 I said, because of the turnover we'd had at the
13 top of the National Guard, I personally was very concerned about
14 getting the right person for the job, because I didn't think
15 that we had.
16 And so, out of just my own personal frustration,
17 I asked three people to vet who they thought would be a good
18 candidate, and then when the Governor made a selection, let me
19 know what their thoughts were. That was: General Temple, who
20 ran the National Guard for the country for President Reagan and
21 President Bush; General Thrasher was an Adjutant General; and
22 then Colonel Freeman.
23 They just, as member of this committee, they just
24 asked on my behalf, they asked some questions; they interviewed
25 him. I said I was going to take their recommendation. That's
26 what I did.
27 SENATOR BOWEN: Senator Battin, I have know
28 objection to that. I'm simply saying that is not a substitute

1 for this process.

2 SENATOR BATTIN: No, no.

3 SENATOR BOWEN: So, I don't understand the need

4 to apologize to someone based on something that you alone on

5 this Committee have privy to.

6 SENATOR BATTIN: No, no. These allegations did

7 not come -- what I was reading was from the Senate Office of

8 Research, which you've been provided. This is a memo to you as

9 a Member of the Rules Committee. This isn't from that. This

10 came from the late allegations, the whisper campaign, that

11 caused the Rules Committee staff to have to go back and

12 re-evaluate everything.

13 That's what I was reading, not anything from what

14 I did.

15 SENATOR BOWEN: Let me just say that I think it's

16 totally appropriate.

17 I don't want to send the message to the public

18 that we don't encourage people to come forward.

19 I will have to assert my prerogative as the only

20 female Member of this Committee to tell you that it is

21 particularly difficult for women to come forward publicly and

22 make any kind of concerns or allegations. It's why this body

23 and the Assembly have specific procedures for dealing with

24 sexual harassment claims, or any kind of claims like that.

25 And I think that we also have had an experience

26 this year with another nominee whose confirmation we voted on,

27 all of us, and whose resignation we subsequently effected, where

28 many of us wish that we'd had some additional work done by the

1 Senate Rules Committee, and that people had come forward.
2 Not speaking to the merits of it right now, I
3 want to go on record very strongly as encouraging this Rules
4 Committee of making these hearings a place where anyone can come
5 forward and raise any claim or concern and not be made to feel
6 bad for doing so.
7 What we do with it, whether we agree with it, is
8 another matter.
9 But it's such a difficult thing historically for
10 women to feel like they have the ability to come forward that I
11 just don't want anyone to leave this hearing room feeling like
12 we're sending the message that you shouldn't do that, don't come
13 to Senate Rules Committee and have anything to say.
14 My questions actually are primarily related, and
15 there're just a few, to the actual workings of the agency.
16 And I do apologize for missing the beginning of
17 the hearing.
18 You came in with a history of some difficulties
19 with this agency. And I have some questions about how we're
20 going to move forward and make some changes, which I think is
21 what caused Senator Battin to put together a group of people.
22 We had an audit. There were some fairly serious
23 deficiencies in the Military Department's internal controls
24 identified. One of them had to do with the placement of
25 military personnel in positions that could potentially be filled
26 in a much more cost effective manner by state civil service
27 employees.
28 And it's my understanding that you are conducting

1 a review of those positions, but that you do not expect that the
2 recommendations of the panel that you've created will be
3 implemented until 2010.
4 I'd just like to know from you a little bit more
5 about that. I'm concerned about the long timeframe.
6 Perhaps I'm not understanding correctly, but I'm
7 understanding that you have a situation in which someone who's
8 been federal active duty can retire and then go on state active
9 duty and make time-and-a-half for doing exactly the same job
10 that they had previously been doing.
11 We have a big shortage, as you acknowledge, of
12 personnel. I'm concerned that if we're paying some people 150
13 percent of what they were previously making, that we are
14 short-changing the people of California because we're not able
15 to use that funding for other purposes.
16 Why don't you talk to me a little bit about your
17 review of these positions, and the audit, and your timeframe for
18 correcting the problem?
19 GENERAL WADE: Thank you, Senator.
20 As a matter of fact, I'm on record as of
21 yesterday in testifying in front of the JLAC on some of these
22 very issues in response to the Bureau of State Audits and our
23 60-day response.
24 And during that hearing, Ms. Elaine Howell from
25 the Bureau of State Audits had spoken specifically to the
26 progress that we're making in each of the areas, one of which
27 you just referred to.
28 What I had said in trying to reform state active

duty, the very system that you're concerned about, is that to complete it could take from three to five years. And I'd be happy to elaborate on that.

First off, I guess the best place to start is, we're talking about state active duty, SAD system. And our State Constitution says that military service, militia service, state active duty, is not state civil service, and therefore is different. They are not one and the same.

And therefore, trying to make these changes as we see appropriate is not as easy as a one-for-one swap. There are other agencies. The Department of Personnel Administration, the State Personnel Board, Department of Finance are all involved, as I'm sure you're aware, in making those changes.

Secondly, many of these people that I say have active duty have statutory rights to continued employment. I just can't arbitrarily say, "You're no longer a state active duty captain; you're now a state active duty sergeant or you're out of a job," because I want to change it to civil service.

SENATOR BOWEN: If the position is eliminated in the budget, there is no protection; right? There's nobody in state government who has a right to continue in a position if the Legislature and the Governor don't fund the position.

GENERAL WADE: Yes, ma'am. In that case, that's very true.

SENATOR BOWEN: So then the question is, why don't you come to the Legislature and say, "Here are the positions that need to be made civil service positions," and in the budget process we'll add the civil service positions and

1 remove the SAD provisions that are, in your view, not deemed to
2 be appropriate?
3 GENERAL WADE: That is exactly the reform
4 process, part of the reform process, that I've undertaken.
5 The first thing I did as Adjutant General,
6 Senator, was to freeze our state active duty. I did not allow
7 any hirings unless they were -- those positions were reviewed,
8 and they were deemed necessary to be hired, and to be state
9 active duty.
10 So, there was some immediate effects there. As
11 it turns out, as a result of that process, and also other
12 things, 23 people who were formerly SAD, state active duty, are
13 either gone, or have been converted to state civil service as
14 the position became vacant, or we announced it because we had a
15 chance to catch those and announce them state civil service.
16 What I did was, I commissioned a panel to review
17 all 210 position descriptions. And they had various criteria to
18 include: Is it inherently military job; is it specifically
19 required for emergency response or support to the state, because
20 I can do more with state active duty personnel on a 24/7 basis
21 than I can with state civil service. They have a much lower
22 range of what I can do with them -- nights, weekends, holidays.
23 As a preliminary result of the reform panel, I do
24 have the results, 73 positions, or 35 percent of them, were
25 deemed to be military in nature, and the panel recommended that
26 they remain state active duty; 30 percent, or 63 of them, could
27 be filled state active duty/state civil service/federal
28 technician, or even active Guard Reserve. So, we have to look

1 at those and find what is the best mix. So, there are 63
2 positions that we could possibly move out of state active duty
3 to another employment system; 20 percent, or 43, also could be
4 filled by something totally other than state active duty; and
5 then there was 15 percent, or 31 of them, that the review of the
6 duty description was inconclusive, and so we sent those back to
7 get clarity on the what the position description is.
8 Now, that was the -- that was our first part of
9 the process, of the charter that I had given our folks. And
10 that has been -- that has been completed now, so we have a
11 baseline from which to work so we can move forward.
12 Now, what we have to do with those, those that we
13 decide can be put in another system, especially state civil
14 service, I need to work now with position descriptions. I have
15 to work with the Department of Personnel Administration, the
16 State Personnel Board, and the Department of Finance to get
17 those changed over, to announce those positions, to hire for
18 them.
19 And that's the process that takes time. That's
20 what I don't control, Senator. Some of that can take up to a
21 year-and-a-half for all those various things to align, not my
22 timeline, timelines given to me by others.
23 That's how I got to the term three to five years.
24 We want to move faster, and we are moving on those now. And it
25 is our intention to balance the force.
26 I have seven personnel systems that I have to
27 work with. I don't believe that you were here for my opening
28 statement. I have: state active duty; state civil service;

1 federal technicians; I have emergency state active duty; and
2 then I have what they call full-time -- full-time duty National
3 Guard. And that can be either AGR, Active Guard Reserve; that
4 could be special work, or it can be counter drawn. And I have
5 to balance all seven of these systems as I move people in and
6 out of them to make sure I can -- I can handle both my state as
7 well as my federal mission.
8 So, when you put it all together, it will take me
9 a while, but we are -- we are moving forward on that.
10 The other part of the charter is to, now that
11 we've done the initial review, to go back, make recommendations
12 on exactly what those positions should be, and start the process
13 to move them, if we have to move them, to state civil service or
14 federal technician. Also, to rewrite our state active duty
15 regulation to make sure that we are appointing and retaining
16 people properly. Also, to compare that then to our California
17 Military and Veterans Code to make sure that they're all in
18 sinq, that haven't created one problem by solving another one
19 with a different document. And then to seek legislative support
20 and approval to make those kinds of changes that we deem
21 necessary.
22 SENATOR BOWEN: Another item from the audit had
23 to do with the use, and I believe this is before you arrived
24 there, so I want to clarify that I'm asking you for how we're
25 going to change this, but it dealt with the Department's use of
26 federal troop commands and Counter Drug Program funds for
27 unauthorized purposes. And the audit comes to the conclusion
28 that there're insufficient internal controls.

1 So, my question to you is, what steps are you
2 taking to strengthen internal controls? And then, how many
3 people were involved in the illegal use of funds, and where are
4 they now? What disciplinary action's been taken?
5 GENERAL WADE: Yes, Senator.
6 The answer to your first part, the best internal
7 control is me, the Adjutant General, not going there again. And
8 that's straight forward; that's simple.
9 My predecessor chose to make the moves that he
10 did really in light of advice to the contrary.
11 Having been a Counter Drug Commander before, I
12 understand how you can go about that. You may legally do that,
13 and it's very simply, rather than beg forgiveness after the
14 fact, you ask permission before the fact. And if you want to
15 use Counter Drug personnel or resources, you may do that. You
16 must get it approved ahead of time. And part of that approval
17 process, Senator, is the agreement and the timeline to pay those
18 funds back. That's what failed to happen.
19 So, I'm the first line of defense.
20 The second line of defense is the United States
21 Property and Fiscal Officer who, although he works in this
22 state, every state has one, who is the custodian and fiscal --
23 has a fiscal responsibility for those federal funds. He works
24 here.
25 I work very closely with him. He's one who
26 provides me guidance, although he does not work for me. He
27 works for the Chief of the National Guard Bureau, and therefore,
28 that is the oversight with the United States Property and Fiscal

1 Officer being involved in it.

2 That's the other part that was missed by my

3 predecessor. He did not involve his US PFO to make proper

4 decisions.

5 SENATOR BOWEN: Then a final question. One of

6 the things that really concern me about this audit was reading

7 that 95 of our 109 armories are in need of repair, improvement,

8 contributing to a $32 million backlog.

9 This doesn't surprise me at all, given the few

10 armories that I have some knowledge of, even just from the

11 outside. With many of the armories, you can get a pretty good

12 sense that you've got a little deferred maintenance.

13 GENERAL WADE: Just a little.

14 SENATOR BOWEN: To say the least.

15 Our armory fund has not been adequate to maintain

16 armories. What do you plan to do to address this? What should

17 the Legislature be doing to solve the problem?

18 GENERAL WADE: I'm sorry, Senator. It's actually

19 worse. It's a 35.8 million backlog for maintenance and repairs.

20 It's maintenance and repairs, and it's also safety issues that

21 usually end up being the first thing that get taken care of in

22 an armory, because obviously, safety has to come first.

23 One of the problems that we have, you're right,

24 we have not gotten enough money, although we asked. Last year

25 we got $2 million. This year, we were able to get a

26 million-and-a-half, with the matching million-and-a-half from

27 the feds.

28 Whenever I can, we do our best to go and get

money from the federal government in matching funds to offset what we get from the state. So, the more the state's able to give us, the more I can possibly get from the federal government. But heretofore, that has just not been enough to keep pace with things.

We do have a very robust not only program for seeking federal funds and state funds, but more over, a military construction program so that we can modernize as well as build -- modernize old armories and build new armories, and modernize them before they get to point that ours are in right now, that we're really throwing money down a black hole.

I would be more than happy to meet with you and the other Members of the Committee and go over that plan in detail, because we have a plan over the next six to eight years for tens of millions of dollars in both modernization as well as new construction.

SENATOR BOWEN: Can you, in just a thumb nail, tell me what kind of an impact that failure to maintain the armories is having on our readiness?

What happens if we have the need, if we have earthquake in San Francisco, which it's my understanding is not a question of whether, it's just when? What's happening? What's the net result for us of not keeping the maintenance current?

GENERAL WADE: The maintenance on the armory, rather than a direct effect, has really many indirect effects on your Guard.

Obviously, soldiers would like to go a more

modern armory. They would like to go to armories -- many of these from before actually had their own shooting ranges in it, so we can continue our rifle marksmanship and pistol skills. Cannot do that anymore because those that still have them, they are condemned. They're not allowed to use them. Lead contamination and that type of stuff.

Also, it makes it very hard to use our armories to support the citizens of California if we need to open them as shelters in the case of an emergency or something, because they are so old, they do not have adequate kitchen or restroom facilities. With some chewing gum, bailing wire, and bandaids, some of them we've worked out male/female restrooms. Many of them were still designed when it just an all-male Army.

So, those are the things that make it difficult for us to support things like emergencies, housing the homeless, and other things that have an indirect effect. And what happens is, when we do that, the buildings take a greater beating. When the soldiers come back in to use it for drills, it's just that much more dilapidated.

SENATOR BOWEN: Do you have any idea when the last armory was built in California?

GENERAL WADE: Well, are you talking about from that particular era, because --

SENATOR BOWEN: I'm just think that will probably tell us --

GENERAL WADE: We have some -- some modern armories that have been opened in the last twelve months. That's where we're going.

The other thing, and Senator, you're asking very good questions, the hard thing for us is to align our state fiscal year with the federal fiscal year.

SENATOR BOWEN: Which is October.

GENERAL WADE: Yes, ma'am. And many times that difference of those months, the window of opportunity closes for us to get federal matching funds. That's happened more times than I think I can count.

SENATOR BOWEN: We should be able to solve that by moving our cycle a few months backward.

GENERAL WADE: I would entertain anything the Legislature can do to help us.

CHAIRMAN PERATA: I'm making a note of that.

[Laughter.]

SENATOR BOWEN: Senator Perata's got that one written in indelible ink on the inside of his wrist.

Thank you for your time, sir.

GENERAL WADE: Yes, ma'am.

CHAIRMAN PERATA: I'm going to let you wrap up.

GENERAL WADE: If I may.

And I do acknowledge the right, as Senator Bowen has said, for people to come and speak their mind, even in opposition to me. And I recognize that right. I've served 36 years in the military to Defend that right, and I just did it overseas last year.

I will just talk very general, in the sense that I could respond to them. I don't think that's appropriate. That's privileged information, that's private information, and I

1 don't think that's proper to get into it here.
2 But I will tell you that I stand by the
3 statements that I've made in any investigations that I've had.
4 I think more importantly, I have a proven track
5 record of being fair and equitable in my treatment with
6 everybody. As Mr. Zell said, they might not always agree, but I
7 fully support all efforts, and I take seriously all allegations
8 of discrimination, of harassment, or misconduct. And I take all
9 the actions that I can, and support actions from other agencies,
10 to investigate all such conduct.
11 And that's one way I live my life. That's the
12 way I was in the Army. That's the way I was in TSA. That's the
13 way I was in my own business. I treat everybody as if I want to
14 be treated, and that's fairly and that's honestly.
15 In other words, you've got to take the good with
16 the bad.
17 I would like -- I will respond to one thing in
18 particular, allegations of making racist remarks, "Driving Miss
19 Daisy," and others alluding to what might have been a remark
20 about people of a different lifestyle when I said, "I guess
21 those guys are going to have to go to San Francisco." I'll take
22 the second one first.
23 I honestly don't remember that. I make a lot of
24 comments about San Francisco. I was born and raised there. I'm
25 very proud of being from San Francisco. I've heard all the
26 jokes that can be said about San Francisco.
27 I'm sorry. I honestly don't remember that, or
28 the context in which I might have said that.

1 "Driving Miss Daisy" was a very interesting thing
2 to pick on. As you've already heard, and it's very true, we had
3 a townhall meeting. And I had the Director for the Office of
4 Civil Rights come out at that meeting at my request, because we
5 had previous training before. We had significant problems with
6 just inter-employee conduct, conflict.
7 And the first training we got, I thought, was
8 woefully inadequate. I personally went to the Director of the
9 Office of Civil Rights, and I said, "We need better training.
10 And we need training of my supervisors and managers." That was
11 part of that training. It was a four-day training program.
12 The townhall meeting was a culmination of that,
13 where now the rank and file employees came in and heard about
14 the training that supervisors had received, and what the
15 individual employee's rights and responsibilities were.
16 Following that, I was giving out cash awards. I
17 had requested and received money to acknowledge the great work
18 that the screeners had done.
19 Now, I prefaced the presentation of that money by
20 thanking the screeners for what they had done. I said, "This
21 has been a very, very difficult year-and-a-half for us.
22 Airports don't like us. Air carriers don't like us. The
23 traveling public don't like us. There's not a thing we can do
24 to make everybody happy." But I said, "You've worked hard. I
25 appreciate your dedication, your patriotism in serving your
26 country, and particularly I know it's been a very disagreeable
27 job." And I said, "You're always going to run into disagreeable
28 people, not unlike 'Driving Miss Daisy.'"

1 If you saw the movie, you know what I'm talking
2 about. Miss Daisy was a very disagreeable person. That was the
3 context in which I made the remark.
4 And I'm sorry that somebody might misconstrue
5 that as being a racist remark.
6 Now, I won't take the Committee's time any more.
7 It's available if you'd like it. I have a copy of an email that
8 was sent by the Director of the Office of Civil Rights, who was
9 standing next to me when I made that remark. I'm sure if I was
10 out of line, I would have known about it. But a report to her
11 higher that said that the management of Sacramento International
12 Airport was in full compliance and was behind the principles of
13 proper stewardship of our personnel resources.
14 The last thing I would tell you to show you my
15 commitment, and I'll make this short, you can look it up on
16 line. It was in Army Times and other things.
17 While I was overseas, it came to my attention
18 that some females in my command were being subject to
19 harassment. When I found that out, I assigned one of my senior
20 female officers to see if she could find out what's going on and
21 make sure that the people that wanted to be -- that were alleged
22 to be harassed knew that they should report it, and immediately
23 put the person on notice that the conduct is unacceptable, would
24 not be tolerated.
25 What came back to me was, you know, it might be
26 deeper than this. They're scared to even say anything.
27 I immediately launched what they call a
28 Commander's Inquiry by assigning an investigating officer, who

1 came back to me. It was even worse yet. It was indicating it
2 might even be something as serious as sexual assault.
3 When that happened, I immediately started what
4 they call an AR 156 investigation. The investigating officer
5 came back in very short order and said, "This is serious stuff,
6 General."
7 And at that point, I suspended the alleged
8 offender because he was a high level ranking officer. I
9 suspended him from command, and I separated him from all the
10 females that he was alleged to have harassed.
11 As the results of the investigation came out, it
12 made me believe that there was enough evidence to indicate that
13 there could be sexual assault involved. I immediately relieved
14 the officer from command. I disarmed him, and then shortly
15 thereafter, I actually removed him from the theater of operation
16 and sent him back to Europe because I found out it was so
17 serious, and the females were worried about their safety.
18 As a court martial convening authority, I
19 ultimately preferred charges against this senior officer. He
20 was convicted, and he is now serving time in federal prison for
21 those actions.
22 That's how serious I take any allegation of
23 misconduct.
24 CHAIRMAN PERATA: Thank you, sir.
25 Senator Cedillo, did you have a question?
26 SENATOR CEDILLO: I was interested in your
27 thoughts on deployment challenges you have.
28 You have people at the border. What are your

1 thoughts on that policy?

2 GENERAL WADE: Senator, as I've said, I've been

3 in the Guard. I've been to a lot of state emergencies here in

4 this state. I've done floods, fires, earthquakes. I've been in

5 the airports.

6 You have a very robust National Guard, and right

7 now we have easily 16,000 soldiers and airmen to respond to

8 anything that we do.

9 We have the capability, a very robust capability,

10 to support civil authorities for any kind of emergency or

11 disaster response.

12 And we have people on the border. We have some

13 folks in the airports. If need be, I would withdraw those

14 people. I've already talked to the administration. I would

15 withdraw those people from the border, out of the airports, if

16 it came to a civil disaster of a magnitude that required them.

17 Also remember that we're a member of EMAC, the

18 Emergency Management Assistance Compact. So, I can call on all

19 those other 29 nine states and 4 territories for their support

20 as well, just as Mississippi and Louisiana did during Katrina,

21 and we sent our folks there.

22 So, we have a robust capability. I see that we

23 are postured well to respond to that. And we have plenty of

24 resources and capability in the event we're needed.

25 SENATOR CEDILLO: You know, my thoughts are that

26 this has been unnecessary. Katrina, something that we were very

27 generous and supportive of, helping other Americans.

28 Obviously your recent deployment in the airports

is a tremendous concern, a good cause.

As Senator Bowen said, it's only matter of time in questions of earthquakes in California. Fires seem to be pretty regular.

Your thoughts of the necessity of a deployment there. Is there some value to the Guard in terms of a deployment there?

I really don't see the necessity for that, on the policy question.

GENERAL WADE: Well --

CHAIRMAN PERATA: He's a soldier.

SENATOR CEDILLO: That could be a very fine response. I just want to here from him, though.

GENERAL WADE: Thank you, Senator. And you just said it. That's really a policy decision of deploying those soldiers either on the border, into the airports, or even to a civil emergency.

I am a soldier. I'm responsive to civil authority, and I salute the flag, and I move out smartly.

I think what's more important is, when I took over -- when I came back and took over the ranks of the Guard, we still had about 6,000 soldiers and airmen deployed. We're down, well down below 2,000 at this time. That was a conscientious decision, to work with the Army and to stop signing up, agreeing to so many missions to send soldiers overseas.

As I said in my opening statement, we've sent over 21,000 soldiers and airmen. I think California's done

1 their fair share.

2 And I wanted to make sure that, as the Adjutant

3 General, I had robust capability here to respond to, God forbid,

4 a major disaster like a Katrina.

5 CHAIRMAN PERATA: Thank you.

6 I understand that you have family here. They may

7 have gone, but they were here earlier.

8 [Laughter.]

9 GENERAL WADE: I have my bride, Leslie, with me,

10 and my youngest son, Billy.

11 CHAIRMAN PERATA: Nice to see you both.

12 GENERAL WADE: Then there's a bunch of people

13 back there in uniform.

14 CHAIRMAN PERATA: I see that, yes, hoping that if

15 you trip, they can come up and take your place.

16 [Laughter.]

17 GENERAL WADE: Yes. Did you notice them eyeing

18 the stars? Yes, sir.

19 CHAIRMAN PERATA: Well, as one who has made an

20 intemperate statement, not that you did, but I recently -- in

21 fact, you're on the border defending some of the people that I

22 had criticized. I understand how that goes.

23 I want to thank you for the presentation, and

24 thank all of you who, pro or con, spoke. It's been a little

25 over two hours, but I think it's been very informative.

26 We have a motion to approve. Call the roll,

27 please.

28 SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: No.

SECRETARY WEBB: Ashburn No. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to one.

CHAIRMAN PERATA: Four to one, congratulations.

GENERAL WADE: Thank you, Mr. Chairman, Committee Members.

CHAIRMAN PERATA: We are going to recess for ten minutes.

[Thereupon the Rules Committee took a brief recess.]

CHAIRMAN PERATA: The Senate Rules Committee will reconvene.

We're going to take these in the logical grouping, which means that Ms. Bryson and Mr. Garner would come up for Adult Parole.

Then we will go on to the Board of Forestry.

They've decided that you've done really good work, and you may be able to get out soon.

Thank you. Please.

MS. BRYSON: Mr. Chairman, Members of the Senate Rules Committee, thank you for giving me the opportunity to

appear before you today.

I appreciate the appointment by Governor Schwarzenegger and would like to acknowledge the support of the California State Sheriffs Association, many respected professionals, and the support of my husband and family.

Since November, I've conducted over 450 parole suitability hearings and participated in 7 en banc hearings. These hearings have called upon all of my personal and professional experience.

That experience began with a solid family who encouraged my brother and me to pursue education, to travel, and to appreciate cultural diversity. College studies in science and professional work in research taught me the value of critical thinking. Travel throughout my career to many nations has helped me to understand the importance of interpersonal communications. Public service as a ranger, a deputy sheriff, the founder of a nonprofit search and rescue group has taught me to face the challenges of incidents involving life and death.

Board of Parole Hearings Commissioners are responsible for conducting fair hearings by considering the multiple dimensions of public safety and inmate due process in assessing parole suitability.

I would like the opportunity to continue to grow in this position, and I would be happy to answer your questions.

CHAIRMAN PERATA: How long does it take to get from Markleyville to anywhere else?

SENATOR BOWEN: Two hours and forty-five minutes, if there isn't any traffic.

1 CHAIRMAN PERATA: Yes, but where do you go after
2 two hours and forty-five minutes? Oh, to the big metropolis.
3 [Laughter.]
4 SENATOR BOWEN: It's 25 minutes to Minden.
5 MS. BRYSON: Approximately, that's right.
6 CHAIRMAN PERATA: Mr. Garner, how are you?
7 MR. GARNER: Very good, thank you.
8 Good afternoon, Mr. Chairman and Members of the
9 Senate Rules Committee. I'm grateful for the opportunity to
10 appear before you today.
11 I've devoted my entire life to public safety and
12 service. When the Governor indicated his confidence in me by my
13 appointment as a Commissioner on the Board of Parole Hearings, I
14 accepted the responsibility for conducting fair and impartial
15 hearings, always with the concern for the public's safety.
16 I've conducted over 430 parole consideration
17 hearings since November of 2005. The work is challenging and
18 demanding but never dull, in that each hearing presents a new
19 and different set of circumstances.
20 I feel during my time as a commissioner, I've
21 established a reputation for conducting fair and impartial
22 hearings in a respectful manner, always with the concern of due
23 process.
24 I would appreciate the opportunity to continue
25 serving as a Commissioner on the Board of Parole Hearings, and
26 respectfully request your confirmation.
27 Thank you.
28 CHAIRMAN PERATA: So, you retired as a police

1 chief, and then you were around the house too much, were you?
2 Take the Fifth.
3 MR. GARNER: Excuse me, I'd also like to
4 acknowledge that my wife, Diana, is in the audience.
5 [Laughter.]
6 CHAIRMAN PERATA: She can answer this question
7 herself.
8 Don't worry. He's going to get out.
9 I have a couple of just overall questions.
10 Senator Battin is presenting a bill in another committee, so
11 that's where he is engaged right now.
12 You heard a case, Ms. Bryson, an inmate sentenced
13 for murder. The Ventura County DA since 1990 has alleged that
14 the inmate also murdered a second person. The inmate was never
15 arrested or charged with this crime, and yet you are on the
16 record as having overruled his objection to including this
17 information in your consideration of his suitability.
18 I just want to know what your thinking is?
19 MS. BRYSON: Sir, that entered into the hearings
20 via the inmate's attorney. And I quickly talked about it with
21 him on record because that information had been brought in
22 before, the year prior, into the prior hearing. And it had been
23 put on record.
24 I would be happy to read you the testimony, if
25 you like.
26 CHAIRMAN PERATA: No, no.
27 MS. BRYSON: All right. Basically, he objected
28 to that, as was his right. And the inmate supported him in

1 that.

2 And I recessed to consult with legal and get

3 their recommendation, which is my habit to do. And they

4 recommended that, in fact, per Title 15, we have the right to

5 consider all reliable relevant information. That was their

6 recommendation that I state on record, their position on that

7 being that the information had already been entered into the

8 record the year prior, so it was not a surprise in terms of the

9 record.

10 But when I returned and went back on record, I

11 explained that I would overrule him because I would -- it was

12 already in the record. So, that point was moot. But I would

13 give it appropriate weight. And that is, the weight of unproved

14 evidence, unreliable evidence, is zero, basically.

15 Of course, he felt that that brought into

16 question the objectivity of the deputy commissioner and myself,

17 and I represented that, in fact, that would not be an issue. I

18 asked my deputy commissioner if he felt he could be impartial.

19 I said I felt I could be impartial.

20 To me, it was akin to a situation in a court

21 trial, where the jury is asked to disregard material. And that

22 is the way I was viewing it at that time.

23 CHAIRMAN PERATA: I don't know if that's part of

24 the ongoing record.

25 I think that's the biggest concern. If, by

26 rumor, something gets into the record, and it's not expunged,

27 whether or not it's taken into account, at least it could be

28 considered prejudicial.

1 Did you ever get a written thing from your
2 lawyer?
3 MS. BRYSON: No, I did not. But the legal staff
4 is the affirmative. They're aware that they made that decision
5 at the time that I consulted with them.
6 And I would like to add, too, that that was not
7 part of my decision. That did not figure into my decision.
8 CHAIRMAN PERATA: No, no. I am more concerned,
9 frankly, about anything that's alleged and unproven getting into
10 a public record.
11 MS. BRYSON: I concur.
12 CHAIRMAN PERATA: So, I want to flag that because
13 I'd like to look at that further.
14 MS. BRYSON: If I may, sir, the information was
15 already in the record.
16 CHAIRMAN PERATA: I understand.
17 MS. BRYSON: We have no power to remove anything.
18 CHAIRMAN PERATA: No, no. How it got there, and
19 now it's perpetuated. It's taken on a life of its own. We're
20 discussing it here. And that's really the point.
21 It's not you.
22 When it first was done, it looks to me like they
23 got some very bad legal advice.
24 MS. BRYSON: Yes.
25 CHAIRMAN PERATA: So, that's really my point.
26 MS. BRYSON: Thank you.
27 SENATOR CEDILLO: Right, because that's
28 problematic. Whether it was in before, it's unacceptable

1 whether it remains, that we don't make every effort to expunge
2 it.
3 This gentleman who sits next to me made a
4 statement. They didn't misquote him; they made a false quote of
5 Mr. Battin. It appeared in the Los Angeles Times, and of course
6 the retraction was not noted. Then I read about it six months
7 later. So, a statement that he never made is now part of the
8 lore of our perspective on some policy matter.
9 And I raise that as an example, because whether
10 or not it crept in earlier is not relevant, in that if the
11 record's not pristine, that's not a basis for it to continue to
12 be sullied or to be perpetuated. We must then recognize that,
13 expunge it, not accept it, make note of that. Because if not,
14 then it continues. Then, who knows, another period, another
15 review, another evaluation. Now it becomes a matter of fact
16 that's crept into the record.
17 MS. BRYSON: I totally agree with you.
18 SENATOR CEDILLO: Thank you.
19 CHAIRMAN PERATA: These are just basically
20 questions for both of you.
21 You're probably the fifth and sixth parole
22 officers that we've had in here.
23 There have been some concerns expressed that we
24 are having a pattern of multi-year denials that seems to be
25 escalating. And if an inmate receives a series of one-year
26 denials, are you of the mind that there should be stated on the
27 record why the longer period is being recommended?
28 MS. BRYSON: That's affirmative, sir. When we

1 recommend more than one year -- any two, three, or four or five
2 year denial -- we put on record exactly why. That is definitely
3 put on record.
4 And that, of course, is -- is in league with all
5 the state -- all the state law that we have.
6 MR. GARNER: She's correct. Any time that we
7 take an action where we're going to increase the amount of time,
8 we'll put on the record the very specific reasons. And the
9 reasons could be for a myriad of things -- discipline inside the
10 institution, a failure to program, a failure to respond
11 favorably to a prior panel's recommendation. Which -- we always
12 will look at the prior panel's recommendation because these are
13 oftentimes done in a very earnest way to make the person a more
14 suitable candidate. And if they're not paying attention to that
15 particular direction, it's an important consideration.
16 CHAIRMAN PERATA: And we're presuming that we
17 still have no policy regarding psychological evaluations.
18 They're either too old --
19 MS. BRYSON: Sir, staff has assured us that they
20 are on track with coming to agreement with all the interested
21 parties to set up a special unit that will be devoted to doing
22 psychological evaluations.
23 CHAIRMAN PERATA: And that will solve everything.
24 MS. BRYSON: That will solve everything, yes.
25 CHAIRMAN PERATA: Do you have any idea how long
26 before this --
27 MS. BRYSON: I don't have any figures on that.
28 CHAIRMAN PERATA: The Paris Peace Talks took a

1 long time.

2 MS. BRYSON: Yes, I understand.

3 But let me assure you, too, that the board,

4 especially the new board members, are very motivated to make

5 this happen.

6 MR. GARNER: Essentially the same comment.

7 The only other thing that I would add is that

8 there's nothing more valuable than a very reliable psychological

9 exam. They're tremendously valuable.

10 CHAIRMAN PERATA: We're in this sort of a vortex

11 right now of criticism and self-chastizement of our Corrections

12 system. The Governor has called a Special Session. As you

13 know, probably better than anybody, the Federal Court has

14 assigned a trustee for portions of the services provided. So,

15 we're generally in a world of hurt.

16 One of the things that the Governor has been

17 stressing, and others have been talking about as well, is that

18 we have no ability, capability, of doing rehabilitation or other

19 redemptive kinds of activities that might lead to somebody

20 getting out.

21 If it's not a practice, I would encourage you

22 during your time there that when you're at the prison, to go and

23 look at what are the rehab facilities that are available; what

24 are the prospects for people to do constructive things, other

25 than macrome, because if we're asking people during a parole

26 period to do things that are going to better their lives, it

27 would be kind of good to know what they have available to do

28 that. And people that I know who have been checking out the

1 state prison system have been surprised at the dearth of
2 opportunity.
3 I don't know if you've seen that or not, but I'm
4 not going to grade you a year later on what you did, or if you
5 did. But I think you'd find it very useful.
6 MR. GARNER: We acknowledge that there's a direct
7 link between the suitability and the vocational programs and
8 other things that they can do in the institution.
9 One of the difficulties that we encounter often
10 times is the institutional climate. If they have a lot of
11 lockdowns, and there's a lot of strife, that that has a direct
12 impact on the ability of the inmates to program.
13 But that's -- it's a significant concern. We
14 will always encourage them to do things beyond. We encourage
15 them to take their own initiative in the absence of
16 institutional programs, to do self-study, and bring some
17 evidence of what they were able to achieve back to the next
18 board.
19 So, we try to cover all the bases we can because
20 again, we've discussed this, and there's a real strong link when
21 a person comes before you, and has programmed so well, and the
22 determination of them being suitable.
23 CHAIRMAN PERATA: I just have to ask this.
24 Did you promise wife, Chief, when you retired
25 that you'd travel? Is this what this is about.
26 [Laughter.]
27 MR. GARNER: To exotic places.
28 [Laughter.]

SENATOR ASHBURN: Delano.

CHAIRMAN PERATA: Avenal, right.

[Laughter.]

CHAIRMAN PERATA: My only other statement is, I realize this is a very tough job that you're asked to do.

There are those of us, at least there's one guy who grew up Catholic, who grew up believing in redemption.

In our system, parole is really the manifestation of that opportunity.

So, I think you've got one of the most difficult and most responsible roles in our Corrections system. I'm grateful that you're willing to do that.

I have no further questions.

Anybody here in support? Anybody here in opposition?

SENATOR ASHBURN: I'll make the motion to approve both.

CHAIRMAN PERATA: We have a motion to approve for both of the members.

Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Four to zero, congratulations.

MR. GARNER: Thank you very much.

CHAIRMAN PERATA: Do you have any family? Why don't you introduce your wife, now that we've probably put you on the edge of a divorce.

MR. GARNER: My wife, Diana. Thank you.

CHAIRMAN PERATA: Do you have family here?

MS. BRYSON: My husband will just be waiting for the call.

[Laughter.]

CHAIRMAN PERATA: All right. Congratulations. Thank you both.

MS. BRYSON: Thank you.

MR. GARNER: Thank you for your comments about the job.

CHAIRMAN PERATA: I wanted to separate the nominees from this statement, but I feel compelled to restate something.

We've now heard six members of this Parole Board this year in Committee, and it's a little ironic that we are now in another part of this building discussing overcrowding and parole population management of Corrections.

And yet, there seems to be this recurring theme of lengthy and increasing denials for parolees.

And I think that we keep making that point. That's sort of a political environment; I understand that.

However, Senator Cedillo and I in particular had

1 made a point awhile back that the parole panels must be much
2 more reflective of California's diversity, culturally, racially,
3 ethnically. And that the last two appointments -- not the two
4 people just here, but the two that have just been recently
5 made -- do not reflect that at all.
6 And so, my conclusion is that we have not been
7 heard. I think the two persons that were just nominated have
8 acquitted themselves very well.
9 But in the future, the Governor is going to have
10 to do better than he has in the past in doing it much more
11 broad-based.
12 It may be difficult. I don't know what the
13 answers are, but it is as though what we said was not heard. I
14 want to restate it.
15 I'm sure all of you will run home tonight and
16 talk about this.
17 But the two appointments that have been most
18 recently made that are pending in the future are not consistent
19 with what a couple Members of this panel have requested, myself
20 in particular.
21 Gilbert.
22 SENATOR CEDILLO: Well, you know, I don't quite
23 understand what's not clear. It's been a significant time
24 period now. We've been very explicit that this board must
25 reflect the diversity of the state, both philosophically and in
26 all the other aspects. And that's just not the case. Those
27 aren't the candidates that we're seeing.
28 It's as if we're not being heard, or we're being

1 ignored. In either instance, both of them are unacceptable.
2 I just don't understand what the problem is.
3 And I think you pointed out something that's a
4 little ironic, or maybe political. You know, on the one hard
5 we're clamoring about the population problem within the prisons.
6 And then, on the other hand, we're exercising the policy of
7 which we know the results of that policy is that people are not
8 being released from prison. So, everyday we create new laws,
9 put more people in jail, and then we appoint more people to keep
10 people in jail, and then we're clamoring about why we have so
11 many people in jail.
12 I don't know what more we need to say to the
13 Governor's Office. I don't know what's not clear, what part
14 they don't understand.
15 But I think that we should basically place a
16 moratorium on approving anybody who does not reflect a different
17 perspective, because other than that, we will not accomplish any
18 diversity, and accomplish the mission of what the body is
19 supposed to be mean without taking that action.
20 CHAIRMAN PERATA: And we also have discussed in
21 the past, and if you look at the statute there's also a section
22 that talks about, to the degree that it's practical, that you
23 look for people whose life's work is reflective of diversity.
24 So, we have no paucity of law enforcement
25 individuals, and/or victims of crime advocates, but people that
26 have been in the area of education, or the clergy, just so that
27 there is a much broader constituency of discussion that occurs
28 when someone's life is being evaluated.

So again, we're just going to make that point and leave it for the time being.

Again, thank you to both of our nominees. Good luck to you. If you're ever in this area again in the next eight years, stop by and see us.

We have our last five appointees now that are all for the State Board of Forestry and Fire Protection: Stan Dixon, Pamela Giacomini, James Ostrowski, Gary Rynearson, and Bruce Saito.

There are not five chairs up here.

All of you can come up at one time.

SENATOR BOWEN: It has nothing to do with how many we can confirm, right, despite the fact that there's one less chair than there are nominees.

[Laughter.]

CHAIRMAN PERATA: Debra's going to start humming, and when the music stops.

[Laughter.]

SENATOR BOWEN: You don't want me to hum. They'll all go running out the door immediately.

CHAIRMAN PERATA: We don't have enough chairs. We don't have enough microphones. This is your beleaguered state government.

However you want to start, from this to that. Actually, I think, Senator Cedillo, you want to introduce one of our guests.

SENATOR CEDILLO: Yes.

I'm honored, happy, pleased to introduce a friend

1 and a great leader in Los Angeles, Bruce Saito, who has now been
2 the Executive Director about the same time I got elected. But
3 he's just well known and well thought of in Los Angeles.
4 He's been with the Conservation Corps for 30
5 years. Imagine that. Just brings a tremendous leadership,
6 stability, known entity, great leadership.
7 And so, I'm happy to introduce him and to support
8 him, and offer him up for nomination.
9 CHAIRMAN PERATA: And Senator Chesbro is going to
10 come down, but I guess he lost his way. It's not that he
11 doesn't care.
12 Mr. Dixon, you're the Chair.
13 MR. DIXON: That's right.
14 CHAIRMAN PERATA: You get to lead off.
15 MR. DIXON: Thank you, Mr. Chairman and Members
16 of the Committee.
17 We appreciate the opportunity to appear before
18 you this afternoon.
19 CHAIRMAN PERATA: Excuse us.
20 Here I am, saying these things, and here you are.
21 SENATOR CHESBRO: May I, Mr. Chairman.
22 CHAIRMAN PERATA: Yes, sure. Go ahead and sit
23 over there.
24 SENATOR CHESBRO: Thank you, Mr. Chairman and
25 Members.
26 I have the privilege today of knowing two of the
27 members of the board that are up for confirmation very, very
28 well. I won't try to make it sound like an objective analysis.

It's very much a subjective one because I've known them for over 30 years, both of them.

In one case it's Stan Dixon, who I was proud to serve on the Board of Supervisors with. I don't want to make too big a "D" in front of his name as a Democrat, but I do want to tell you that sometimes he and I were pretty isolated on our otherwise very, very conservative board.

But Stan represented the most conservative part of the county. I think developed amazing skills at being able to balance competing points of view, and be a very excellent and thoughtful member of the Board of Supervisors.

I've enjoyed his friendship and service with him, and think that he has brought those skills to the Board of Forestry. And frankly, I am thankful to anyone who's willing to serve on the Board of Forestry.

So, I want to thank everybody who's before you today, because it is not an easy task. These are issues where there's very great difficulty in finding middle ground.

And I think that Stan Dixon is as well qualified to try to find a balanced approach to these issues as anybody I know.

The other person I've known for a long time is Gary Rynearson. Gary is a representative of the industry on the board. I think he plays that role very well.

When I was on the Board of Supervisors, we each had an appointment to the County Forestry Advisory Committee, and Gary was my appointment to that board. I felt that amongst the industry representatives in the county, he was the one who

was most interested in solutions and trying to find ways out of the conflict that almost always exists with forestry issues, and worked very constructively and has ever since, again, from an industry perspective, to try to find balanced solutions to the conflicts over timber issues.

So, I'm very pleased to commend both of them to you and encourage their confirmation.

Thank you.

CHAIRMAN PERATA: Thank you, Senator.

MR. DIXON: Thank you, Senator. Appreciate those comments.

I think I said that I want to thank the Committee for having us here this afternoon to talk about issues that are related to forestry and to answer your questions.

I know that Senators have resumes of all the members before you, as well as written comments to the questions posed by your Chairman, so I won't go into those things.

I do just want to say that having served with Senator Chesbro reminds me that I also had the opportunity at one point to serve with you, Chairman Perata, on the Executive Committee for the California Association of Counties, and with Senator Ashburn on the Board of Directors for CSAC. So, it always pleases me to see county reps do so well.

CHAIRMAN PERATA: That's a matter of perspective.

[Laughter.]

MR. DIXON: I always have to say that, though.

Having said that, I think with the number of members that you have here to interview this afternoon, perhaps

I'll forego any other comments and allow Committee Members to ask questions as they please.

CHAIRMAN PERATA: Thank you.

MR. SAITO: Thank you, Senator Cedillo.

My name is Bruce Saito.

I would like to correct one thing the Senator said. I have been a public servant to the state and Los Angeles for over 30 years, but 10 I served with the California Conservation Corps, from 1976 to 1986, and then I co-founded the Los Angeles Conservation Corps, a private nonprofit, in 1986 to where I am still the Executive Director.

I've had a great and steep learning curve here with the Board of Forestry. I could no way match the experience and knowledge of my colleagues on my left and right here.

But I do have one guiding principle for me, and that is to ensure that the highest standards of environmental protection issues, and laws, and regulations are out at the forefront of all of the decisions that we make, and the input and information that we gather for the various rules and projects that are before us.

I believe the Board of Forestry and Fire Protection has an incredibly vast challenge ahead of it, but I think by working with the administration, cooperatively working with the administration, the Legislature, the agencies, the department, and all of our stakeholders in the many diverse communities of California, we can make -- we can continue to make California a better and healthier state.

And I thank the Committee for allowing me to

speak, and I appreciate your time.

MR. OSTROWSKI: Good afternoon, Senators. My name is Jim Ostrowski.

I want to thank you for the opportunity to introduce myself with a short little statement here.

I've been a forester in California since 1980, when I -- after I graduated from Humboldt State University with a degree in forestry, and I've been a registered professional forester since 1984.

I have spent my entire career working in and nurturing the forest resources of California.

I applied for the appointment to the Board of Forestry and Fire Protection at the urging of my colleagues and associates who asked me to apply my experience, knowledge, and common sense approach to try and resolve some of the contentious issues that have surrounded forest management for as long as I can remember.

My whole career, I think, has been seeing many changes in forest management, and hopefully many improvements as well.

I accepted their challenge and was honored to be appointed by Governor Schwarzenegger to this position.

Senators, I'm an optimist by profession, which is demonstrated by my confidence that the trees that were planted on our lands this year will grow, and in approximately 60-plus or minus years, will be mature and available for future generations to use and enjoy.

My optimism extends to my outlook for the

position on the Board of Forestry and Fire Protection. I'm looking forward to finding balanced, equitable and efficient solutions to some of the contentious issues that will confront us.

I want to thank you for considering my appointment, and I will be pleased to answer your questions this afternoon.

CHAIRMAN PERATA: Thank you.

MS. GIACOMINI: Thank you, Senator.

Mr. Perata, Members, thank you for the opportunity to appear before you. My name is Pam Giacomini, and as you know, I am before you for confirmation for the range seat on the Board of Forestry and Fire Protection.

I am a fourth generation cattle rancher from northeastern California. My husband and I graze our cattle on winter annual range lands around Redding, at our home ranch on irrigated pasture in Hat Creek, and in the summer and fall, on high desert range lands in eastern Shasta and western Lassen Counties. My family has grazed on and managed most of these lands since 1906.

This historical background, as well as our quest to be proactive, innovative, and sustainable in our management of our cattle operation builds the base for the perspective that I will bring to my position to the Board of Forestry and Fire Protection.

I have watched practices change and improve over the decades, knowing that management must continue to adapt and change as we gain more knowledge and improve the science base.

My approach to life and decision-making is one of logic, utilizing the best information available, as well as taking input and insight from others. The decisions that I make while serving on the Board of Forestry and Fire Protection will take no different tact.

One of the goals that I have for my time on the Board of Forestry and Fire Protection is to ensure that we take a comprehensive look at the vegetation treatment programs in order to try to minimize the occurrence of catastrophic wildfire. Catastrophic wildfire, as you know, harms the environment, our citizens, and is extremely costly to the state.

We currently have two processes taking place. One is a draft Environmental Impact Report for the vegetation treatment program. We have a two-member subcommittee of the board, Member Bosetti and myself, that is working with the draft EIR contractors in order to guide the process along and make sure that it moves forward.

The second is a program analysis of all of the various vegetation treatment programs. There are currently around eight different programs that treat vegetation on SRA and other cooperator lands. We are looking at each of those programs to determine their cost and their effectiveness. Once we get the answers to those numerous questions about each of those programs, then we can make some informed decisions about how to proceed with each of these programs in the future.

The number of issues that come before the Board of Forestry and Fire Protection truly astounds me, from Sudden

Oak Death, to reviews of fire plans for counties and cities, to review of the vegetation treatment programs, 4291 implementation, not to mention forest practice rules.

It is no easy task to absorb all of the information needed to make informed and thoughtful decisions, and commit the time necessary to do due diligence to this position.

I commit to you that I am willing to make that commitment of time.

I also commit to you that in each and every instance, I will be open to public input, recommendations from departmental staff, and work to make the best and informed decisions in an open and transparent manner.

Thank you very much for your consideration.

CHAIRMAN PERATA: Thank you.

MR. RYNEARSON: Chairman Perata, Senate Members, my name is Gary Rynearson.

I was first appointed to the board in May of 2000 by then-Governor Davis and reappointed in January of 2002. I was recently appointed by Governor Schwarzenegger in March of this year.

I'm a California native. I was born and raised mostly in Arcata, but have also lived in Alaska and British Columbia, but returned to finish my secondary schooling and my college education at Humboldt State University in 1978, with a degree the forestry.

I've worked continuously in the field of forestry since graduation, mostly in California. For 25 years I was a

1 forestry consultant out of Eureka, but worked throughout the
2 West and did have also some overseas assignments. However,
3 again, most of that experience has been focused in California.
4 I recently joined Green Diamond Resource Company,
5 who is headquartered, the California operations, in Corbel.
6 There I'm the Manager of Forest Policy and Sustainability.
7 I'm a registered professional forester. I'm also
8 a certified forester under the standards of the Society for
9 American Foresters.
10 Currently, as a current member of the board, I
11 serve as the Chair of the Management Committee, and I'm on the
12 subcommittee that is reviewing the Jackson State EIR and Forest
13 Management Plan. I'm also the past Chair of the Forest Practice
14 Committee, and the past Chair of Professional Foresters
15 Examining Committee, the committee that's charged with the
16 licensing and disciplinary matters pertaining to licensed
17 foresters.
18 Some of my past professional experience includes
19 the Chair of the Farms, Fish and Forestry Communities Forum,
20 which was a consensus group designed to help address fisheries,
21 ranching, farming, and forestry issues as they relate to their
22 impacts on salmon. I was also the coordinator and a member of
23 the Scientific Review Panel that was charged with -- by the
24 Resources Agency and the National Marine Fisheries Service to
25 review the efficacy of the Forest Practice Rules for the
26 protection of salmonids.
27 I've been active in professional organizations
28 such as the California Licensed Foresters Association, and the

Society of American Foresters.

I have enjoyed my time on the board, and it's often challenging. It's never dull.

But I believe there are some outstanding issues that need to be addressed. These, in my mind, include the developments of some comprehensive overall landscape-based management plans that allow us to implement forest management while addressing the wildlife, fisheries, and watershed issues in a comprehensive broad scale, rather than doing it in a timber harvesting plan on a timber harvesting plan basis. I believe that would be more efficient for the landowners, the agencies, the concerned public, and certainly the agencies that are charged with administering those -- that permitting process.

The other outstanding issue clearly is the Jackson State Demonstration Forest EIR/Forest Management Plan. I look forward to a future workshop on the direction of those issues surrounding Jackson State, and also currently, the review of the Threatened and Impaired watershed rules that we recently renewed for one year.

I believe we currently have an opportunity before us. As you're aware, or may be aware, we were asked by Secretary Chrisman to address protective standards for the state-listed coho salmon. We are currently reviewing those, the opportunity to take those regulations and bring them together into our regulations, thereby creating a much more efficient manner to administer those regulations.

I look forward to working with all the agencies involved and the departments, trying to honor our Secretary

1 Chrisman's request.

2 Thank you for your time, and I'll be happy to

3 take any questions.

4 CHAIRMAN PERATA: We almost have an alumni

5 association here, Humboldt.

6 You're an art major. Thank God you didn't go to

7 law school.

8 [Laughter.]

9 MR. DIXON: Thank you.

10 CHAIRMAN PERATA: Any questions from the panel?

11 SENATOR BOWEN: I'm not actually sure to whom I

12 should be addressing the questions. It's hard to ask everyone

13 the same questions, but I think what I'll do is just begin.

14 I want to explore a little bit the recent action

15 with the 2112 regulations, and in particular in light of the

16 deadline of August 31st for adopting regulations in order for

17 them to take effect on January 1st of the following year. Which

18 means that if you don't act at your August board meeting, we

19 won't have anything in effect until January 1st of 2008.

20 Does somebody want to talk a little bit about

21 what happened? I know there was a recent change, and that

22 people wanted more time, but I'm concerned about this August

23 31st deadline that you're bumping up against.

24 MR. RYNEARSON: Senator, I'll be happy to try to

25 address that.

26 There actually still is no rule package pending

27 before us, and there was no formal rule package before us for

28 consideration at our August hearing.

However, your concerns regarding implementing a regulation specific to the 2112s prior to the end of the year, I believe there's opportunity to implement any changes in our rules that would incorporate the 2112 process prior to January 1 of 2008.

I think there's probably three ways that could be done. One would be the same way that the Threatened and Impaired rules were implemented in July 1st of 2000. They were actually passed by the board in March of 2000, and were implemented by a special provision of the Legislature that passed, basically a one-sentence line in another bill, that said these rule can be implemented on January 1 of 2000, and they were.

The other opportunity, I believe, is, and this is -- certainly would require a legal position by our attorney, Deputy Attorney General representative, would be potentially for emergency rules to implement these new standards.

And the third opportunity I believe is through a process where we -- we can pass the rules. We have a CEQA function equivalent process through our Board of Forestry process. Fish and Game does not. They're required to. In order to implement the 2112s, they would have to go through the EIR process. And that's one of the reasons, I believe, they've come to us, because we can -- we can do that process in a more efficient manner, rather than doing a full EIR, and still meet the CEQA requirements.

We have opportunity to incorporate those rules, pass those rules, which means they've cleared CEQA, and then it

1 would then clear OAL, Office of Administrative Law. And even
2 though they wouldn't be chaptered, so to speak, until January 1
3 of 2008.
4 We don't have the authority to issue any
5 incidental take for coho. That still must come from the
6 Director of Fish and Game. He at that time can recognize those
7 provisions of our regulations as adequate for incidental take
8 standards under Section 2112, and then simply require those be
9 in timber harvesting plans where appropriate within the range of
10 the coho as incidental take standards.
11 And that certainly could implement those same
12 standards on an interim basis.
13 SENATOR BOWEN: I'm really concerned, because the
14 Coho Recovery Plan was released and adopted by Fish and Game in
15 2003, I believe. That was three years ago. It was adopted in
16 February of 2004, an the following year, Fish and Game listed
17 all of the state's remaining coastal runs of coho as either
18 threatened or endangered.
19 So, we now are at ten years into the federal
20 listing, and four years into the state listing. And we're still
21 not talking about doing anything until 2008.
22 You know, a lot of the law is intended to make
23 sure that there's certainty in the forestry industry, and I
24 think that's extremely important. But I woke up a week or so
25 ago to a story about the potential for commercial fishermen and
26 fisherwomen in many coastal areas of California basically being
27 at the very end. They've been offered emergency loans, and
28 they're saying, you know, why would you want to take on more

debt if you think you're in a situation where you may never be able to fish commercially again, or at least not in a timeframe that would enable you to repay the loan.

So, not just the sport angling community, where obviously there's a great interest, but the commercial fishing interests, I think, really deserve faster action by the board.

Can somebody enlighten me about why it has taken so long to get action on the coho?

MR. OSTROWSKI: Senator, I might say --

SENATOR BOWEN: Rather the THPs in the biological range of the coho. That was shorthand.

MR. OSTROWSKI: I'm a recent member of the board, so I'm not going to speak specifically to all of the past work that's been done, but the board, as I read the rules, has a comprehensive package of rules to protect coho salmon and their habitats.

One of the compelling issues, outstanding issues, that's still there is, are those rules effective? One of the provisions of the recovery plan of the Fish and Game Commission was to develop a five-year monitoring program to see if those rules are effective. And I think that that still needs to be done.

So, and as far as incidental take goes, those guidelines and the rules essentially require that an incidental take permit be required, regardless of whether the 2112 guidance is there.

So, I guess from my perspective, I feel assured that there are a lot of protections in place. We need to review

1 those and make sure they're effective in our -- achieving the
2 goals set out in the recovery plan. And I think that's a key
3 task ahead of us as a board, to make sure that our rules are
4 achieving their goals.
5 SENATOR BOWEN: You're telling me that the
6 recovery plan, which it's my understanding, haven't looked at it
7 in a while, it is 750 pages long, so even worse than the Playa
8 Vista EIR, which arrived at my office in a box.
9 It's my understanding that it was accompanied by
10 a working group of landowners, ranchers, local government reps,
11 timber industry reps, blah-blah-blah. In other words, everybody
12 was at the table, and it has no mechanism in it for assessing
13 efficacy?
14 MR. OSTROWSKI: I don't know if it does not have
15 a mechanism in it.
16 It calls for monitoring and evaluation of the
17 effectiveness of our rules. It specifically calls for the T&I
18 rules to be used as a starting place for evaluating harvest
19 plans.
20 SENATOR BOWEN: It's okay. I can hear over the
21 siren, as long as it's not a truck coming this way.
22 [Laughter.]
23 SENATOR BOWEN: You laugh. I was upstairs when
24 that happened. Didn't get out of the building until I realized
25 a tree outside my office was on fire. Thought that would be a
26 good time to leave. So, urban forestry. It was not a
27 controlled burn.
28 [Laughter.]

SENATOR BOWEN: Are you suggesting that there be yet another series?

Actually, I think what's being reflected here is what I understand was a great deal of confusion at the July board meeting over this issue and what should happen.

MR. DIXON: Actually, Senator, at the July board meeting, the board had expected to consider a package of rules put together by Fish and Game and CDF. And they were supposed to come integrated, showing where the lights and differences were.

However, that did not happen, unfortunately. And I am still at a loss to tell you why that didn't happen.

I asked the board to consider conducting a special meeting, thinking at that time that we still could put out a 45-day notice at this special meeting, which has been set for August 30th, and even have an additional period of time, if we had to adjust.

But most of all, at the Secretary's request, the board was being involved in this process with the 2112 regs really for the first time. So, our timeframe was already extremely short.

But what I believe is that we have a window of opportunity here. And I think Member Rynearson, maybe others, have outlined the possibilities of adopting these rules expeditiously. Through the legislative process probably would be the best, so that they would become effective as soon as the board has the opportunity to bring all the people that are needing to be involved in this, which includes National

Marine -- I'm sorry.

SENATOR BOWEN: It's just hard for me to imagine getting that done legislatively in a way that's any faster than January 1st of 2008, because if you do something after January 1st, first of all, this is the 16th. You have two weeks to get legislation here. There's nothing to base it on in this session. And if we go into next January, it requires a two-thirds vote for anything to take effect before January 1st, or a Special Session, which I think is probably unlikely for this purpose.

MR. DIXON: Perhaps we're under the wrong understanding, but we were told that this was still a possibility if we got this request into some bill by the end of when you close, the 30th or 31st, when you're out of session, if something goes in.

Am I wrong about that?

SENATOR BOWEN: No, you're not wrong, but it would require a waiver of more rules than you all have ever waived.

[Laughter.]

CHAIRMAN PERATA: It's highly unlikely.

SENATOR BOWEN: I want to make sure that nobody's thinking that we're the magic bullet. We're not the magic bullet for much of anything, I'll tell you.

MR. DIXON: I'm sorry. We were led to believe that that was a possibility, and that there is potentially a bill out there that -- maybe somebody else has had that discussion.

SENATOR BOWEN: I'd like to know who led you to that belief?

MR. DIXON: I think it was represented to us at the meeting by some of the conservation people that were in touch with Members of the Legislature.

CHAIRMAN PERATA: Bad advice.

MR. DIXON: Bad advice.

CHAIRMAN PERATA: Theoretically anything's possible, but that would require two-thirds agreement, and we have a hard time getting that on the time of day normally. It might be problematic.

I don't know. Senator Ashburn, if you want to commit to yourself, we're halfway there.

SENATOR ASHBURN: No commitment from me.

MR. DIXON: Well, that aside, unfortunately the board didn't receive the request to become involved in this until quite late for us to be able to meet our own responsibilities by getting something to the Office of Administrative Law in time to make it effective January 1st.

I had hoped that this other process would be a possibility.

But I must say that I think we have an opportunity. And what I'm talking about, an opportunity to do something for the coho, to design a process, a permit process that is way less cumbersome for the industry, an opportunity with the support of the Secretary of Resources to bring the Department of Fish and Game, the Department of Forestry and Fire Protection, National Marine Fisheries, some of the regional

1 water boards, perhaps the State Water Board, together in a
2 process that will make a possibility of doing what has been
3 talked about in the 2112 regs and our own Forest Practice
4 rules.
5 It is unfortunate that the timing of the
6 presentation to us was as late as it was. The fact that the
7 board was not able to take it from the July meeting to adopting
8 a Rule Package Notice of less than two weeks later was, as
9 Senator Perata said, bad advice maybe anyway to do that.
10 But I believe we started a process that will give
11 this the kind of airing, with all the kind of people involved.
12 And we have Secretary Chrisman's dedication to doing this, and
13 we're depending on that.
14 SENATOR BOWEN: Secretary Chrisman's not here. I
15 wish he were. He's not up for confirmation.
16 But I think one of the problems is what appear,
17 at least to me, to be conflicting direction with regard to
18 these. The first letter that he wrote appears to me to support
19 asking the board to get moving and approve the 2112 regs.
20 And then, a little over four weeks later, another
21 letter to Senator Perata implies that his request for
22 harmonization doesn't mean that he wants the board to adopt a
23 particular set of rules, such as the 2112 regs, which his
24 previous letter says,
25 "Any actions the Resources Agency
26 can take to facilitate adoption of
27 the 2112 rules will have my full
28 support and continues to be one of

1 my highest priorities."
2 So, this looks like backpedaling to me. Perhaps
3 someone in the administration can explain to me why I shouldn't
4 view it that way, but that's what it looks like.
5 I mean, while we have a bunch of people out on
6 the coast with salmon fishing rigs who are wondering how they're
7 going to feed their in families, if they're going to feed their
8 families.
9 MR. DIXON: Senator, without going into, you
10 know, the administration's point of view, or Secretary
11 Chrisman's, I think the best I can say to you is that, under the
12 circumstances, we're trying to make lemonade out of lemons.
13 I think we can do that. I honestly believe that,
14 albeit much later than anybody had hoped it would be, I think we
15 have a process that if we can hold people's feet to the fire,
16 we'll do ultimately and much sooner the kind of protections that
17 need to take place.
18 SENATOR BOWEN: I suppose emergency regulations
19 are one possibility. I don't know. I'll have to look at that.
20 I do have a question for the regulated community
21 reps in particular. It has to do with what I understand is a
22 call by the regulated community for another scientific review of
23 the recovery plan, on top of the ongoing scientific review of
24 the T&I rules.
25 First I want to ask you, is that accurate? Is
26 there a push for another scientific review of the recovery plan?
27 MR. OSTROWSKI: No, I don't think that's
28 accurate.

From what -- I'm not quite sure if there's something else that you're referring to as a call by the regulated the community, but I can tell you what the Forest Practice Committee of the board has been pursuing is, in reviewing the extension of the T&I rule package, some of the issues that are brought up by all sides of whether or not the rules are either adequate to protect fish, or are excessive in their protections and costs. Some of those questions, there is -- we don't have a ready answer for.

Some of that would come from monitoring the effectiveness of the rules, but also there's been a lot of research and some monitoring that's been done since the T&I rules were passed in 2000.

So, it was our intent as a committee to try to pull that information together to provide some guidance for reviewing the effectiveness of these T&I rules. So that's --

SENATOR BOWEN: I guess I have to ask Commissioner Rynearson and Commissioner Giacomini in particular about their refusal to vote at a May 2006 hearing for the notice of a rule package that would at least extend the current coho rules for either one, two, or three years.

It's my understanding at the meeting that there was an option, a motion, and that neither of you were willing to support it.

Can you talk a little about why? I guess I should admit that I have a self-interest in Hat Creek that's much the same as the one that leads me to know how far Markleyville is from Minden. That's the East Carson River

there.

Can you talk about the May meeting, and the extension of the rules?

MS. GIACOMINI: Senator, actually we did -- I did vote to extend the rules for one year.

My intent in that vote is a very clear message that we need to move. We can't let this get stuck into a black hole. We need to make sure that we look at the rules, are they adequate, are they not adequate, and let's make any necessary changes.

So, my intent is just, let's -- well, to use Stan's words, let's keep everybody's feet to the fire and make sure that we are moving forward and making progress.

MR. RYNEARSON: Senator, my response is the same as Member Giacomini's.

We -- the vote was to extend one, two, or three years. I spoke against the three-year.

I've been on the board six years. I've extended these rules three times. It's time to deal with them, and either make them permanent or modify them appropriately, one way or the other. And that was my position.

I firmly believed, as I do today, that that can be done in less than a year. Or, it can be done within a year period.

And that reflected -- my vote against the one, two, or three was against the three years. I felt that it just sent a horrible message to the regulated community, to the fishing community, to everybody, that it's going to take this

1 board three years to review rules that have been in place for
2 six years. I just thought that was the wrong message.
3 So therefore, I did support the one-year
4 extension of the T&I rules. They're effective now from
5 January 1.
6 SENATOR BOWEN: So I understand, the original
7 motion was for one, two, or three.
8 MR. RYNEARSON: Yes.
9 SENATOR BOWEN: What a strange way to make a
10 motion. Can you make a motion for something to be done in one,
11 two, or three years?
12 MR. DIXON: Actually, it was a motion for two
13 years, and that was defeated. Then a separate motion was made
14 for one year.
15 SENATOR BOWEN: All right, I understand.
16 Final issue, and this was raised in a letter that
17 I received from the Sierra Club, that's dated yesterday.
18 I want to give you a chance to respond to this,
19 Ms. Giacomini, because it has to do with you particularly. It
20 references your participation in the Coho Salmon Recovery Plan
21 on behalf of the Farm Bureau. It says that was a consensus
22 process that every recommendation was agreed to by all parties,
23 and that at the end of the process, the department made some
24 minor changes, presented it to Fish and Game, whereupon you
25 opposed the Recovery Plan as well as the listing.
26 You'll get a chance to respond to that.
27 Accurate? Inaccurate? Or as judges in Traffic Court say,
28 "Guilty with an explanation."

I accept it's not a matter of guilt. I really don't want to that about it in those terms.

That's the concern, that you participated in the formation of this thing, and then opposed it.

MS. GIACOMINI: It's very interesting that the consensus process kind of turned into a weird kind of mushed up consensus process. So, that's kind of the first statement.

The second is --

SENATOR BOWEN: Should I ask you for more detail on that? Do I want to know about the mush? Is it like legislative sausage.

MS. GIACOMINI: It might be like that; it might be like that.

It's very interesting that -- I did. I served 18 months going to meetings and spending a lot of time on the Coho Recovery Plan.

SENATOR BOWEN: That'll teach you.

MS. GIACOMINI: Yes.

It was all very informative, and really we had a great process.

The point that I think you had mentioned earlier was, are you telling me that there isn't good monitoring out there? Yeah, that's what I'm telling you. There isn't comprehensive monitoring --

SENATOR BOWEN: I asked if there's any.

MS. GIACOMINI: Yeah. Actually, there's a lot of things going on, but there's not a comprehensive look at the monitoring.

And that was one of my basic concerns, is, I would actually visit with landowners and find out that Fish and Game was doing a study with them cooperatively to gain data on, you know, how are practices working, how many coho are there, that type of information. That they, Fish and Game, wouldn't share that with us as a Coho Recovery Team.

And so, it's a little bit frustrating for me, not being a scientist. I mean, truly I don't understand how to put together a study, but if they could just share that information with us so we knew that it was an open, transparent process, all of the things that were going on out there on the ground.

So, I have to question some of the science, you know. And that was my position in representing Farm Bureau at that point.

I don't know if that's helpful or not.

SENATOR BOWEN: But the recommendation was or was not agreed to by all the parties at the end?

MS. GIACOMINI: With the consensus process on each item, we went through this in various stages. So, we literally went watershed by watershed in the coho range. And there were individual practices, or kind of landscape level recommendations that were agreed to. And then there was the greater Coho Recovery Plan that was agreed to.

And I think we all agreed. My statement in front of the commission on behalf of California Farm Bureau was coho probably may not warrant listing because we don't have all the science on the record. That science wasn't there.

SENATOR BOWEN: So, I'm still not clear that I

1 understand.

2 You agreed. You were one of the members who

3 participated and voted for or supported all of the

4 recommendations, but without feeling that the underlying premise

5 was accurate?

6 I don't understand how you could work on all of

7 these recommendations for the Coho Salmon Recovery Plan, and

8 then say that you don't think there's enough evidence to support

9 a Coho Recovery Plan.

10 MS. GIACOMINI: What we support in the Coho

11 Recovery Plan is the nonregulatory functions which help

12 cooperating processes on the ground recover coho. That's what

13 we support.

14 SENATOR BOWEN: I have no idea what you just said

15 means.

16 MS. GIACOMINI: When -- in Siskiyou County,

17 another area that I know that you like very much --

18 SENATOR BOWEN: You're just reminding me of all

19 the places I haven't been in the last year.

20 MS. GIACOMINI: They just went in, and through a

21 cooperative process, guided by the Coho Recovery Plan, installed

22 something like 35 fish screens to allow those landowners to be

23 able to continue to manage their working landscapes.

24 That is exactly the kind of result that we need

25 to see coming out the Coho Recovery Plan, which I fully endorse.

26 SENATOR BOWEN: Okay, all right.

27 I look forward to hearing from witnesses.

28 Perhaps I'll have a different view, or it can help me understand

some of these things. It's very tangled to understand what's going on at the board at various places in this whole conversation.

CHAIRMAN PERATA: Okay, why don't we do that.

Anybody here who wants to enlighten Senator Bowen, or just generally want to support all five, some of the five?

SENATOR BOWEN: The Coho Five.

[Laughter.]

MR. WETCH: Mr. Chair and Members, Scott Wetch on behalf of the Labor Management Committee of the Forest Products Industry. It includes the Carpenters Union, Machinists, Paper and Pulp Workers, Miners, Woodworkers, and assorted other labor entities represented in the forest products industry.

In strong support of all five of the nominees. Particularly, though, I'd like to speak to the three industry representatives.

Our organization feels that it's absolutely imperative that you have continuity on this particular commission, because the issues, as we've seen, are so technical and arcane that this is one board in the State of California that really necessitates continuity.

In respect to the coho issue, I'd like to make a few observations from my organization's perspective. I think that it's been made clear here today that certainly what was represented in the opposition's letter, that all opportunities are lost before January 1st of '08, is just simply not the case.

1 In fact, an emergency regulation certainly could be adopted and
2 put in place well before then.
3 Secondly, I think that it's -- you know, the
4 board members were faced at a July 4th meeting with not having
5 rule-making rules ready to be adopted before them. I think that
6 would be tantamount to expecting the Legislature to pass a
7 budget without having the Department of Finance and the Governor
8 having submitted one to the Legislature.
9 SENATOR BOWEN: Really, I haven't pushed too hard
10 on that, because I'm one, as Senator Perata knows, one of the
11 chief pains in the rear when it comes to actually wanting to see
12 what it is I'm going to vote on.
13 MR. WETCH: In that respect, I think that they
14 acted admirably when they decided to have a special hearing on
15 the 31st to seek greater input. But even more importantly, to
16 seek out all the scientific information that's been collected
17 since 2000.
18 And frankly, it makes my organization a little
19 bit -- we find it a little bit ironic that the opposition, who
20 typically is before this Committee and others, criticizing and
21 even opposing certain confirmation of certain commissioners
22 based on the fact that they don't believe that they defer to the
23 scientists, that they don't seek out the input of the biologists
24 and the scientists, and then yet turning that around and taking
25 aim at only three of the commissioners up for confirmation
26 because they want to seek that additional scientific review.
27 When, in fact, the board voted on a 7-0 vote to have that
28 hearing and to seek that information.

So, I think that the industry representatives are being unfairly singled out, and I think that it's been stated today they have definitely made a good faith effort and a commitment to resolving this issue in as timely a manner as possible.

We certainly support that process, and urge an Aye vote on all five of the nominees. Thank you.

MR. KEYE: Mr. Chairman and Members, my name is Bill Keye. I'm registered professional forester, and therefore a professional colleague of a couple members before you.

I'm also here representing one of my professional associations, the California Licensed Foresters Association.

We have submitted a letter to the Committee on Monday supporting the three members that are most closely affiliated with our interests as foresters.

The board has nine members, including five public members, and three forest industry representatives, and one range management.

So the Legislature, in its wisdom, has set that up. And so apparently we have an attempt to try to peel away some of that by calling some folks not qualified to serve. I would say that -- that we've been -- heard banding about the July date for the Board of Forestry meeting. Actually, it's worse than that. The Board of Forestry met early this month and still did not have the language that's been referred to. So, the decision was made to call a special meeting at the end of this month.

So, this has all developed very rapidly, and I

1 think there are some that are using the political process to try
2 to shoe-horn in their interests.
3 But I would simply say that we have a nine-member
4 board. We have a minority representative of the regulated
5 community.
6 I think it's important to have leadership on the
7 board. As you've seen, these issues are -- they do not avail
8 themselves to narrow solutions, narrow band solutions and narrow
9 band thinking. These are -- these are complicated solutions.
10 Forestry is both an art and a science.
11 And when you talk about forestry, you're talking
12 about people's jobs. You're talking about a commodity that we
13 all use. And at the same time, you're talking about a lot of
14 intrinsic values that we all value. So, it's quite important.
15 I would just recall Senator Chesbro's remarks in
16 support of the two, that he said that they exemplified the
17 looking for solutions and the balance.
18 And I think that's really what the foresters are
19 hoping for. We need -- you know, clearly we have difficult
20 issues before us. And yet, the trees are still out there
21 growing. There's got to be a way to do this, take care of the
22 coho salmon, have a sustainable timber industry, and get away
23 from extreme solutions to these issues and short-term political
24 posturing or whatever.
25 So these -- all these nominees are outstanding.
26 We are in particular support of Gary Rynearson, Pam Giacomini,
27 and Jim Ostrowski. They each have rich career backgrounds.
28 They're people of very high integrity.

And so, we would urge your support. Thank you.

MR. BISCHEL: Mr. Chairman, Members of the Committee, my name is David Bischel. I'm President of California Forestry Association, a trade association that represents nearly four-and-a-half million acres of private industrial forest lands in this state.

I would certainly echo the comments that were just previously made. Encourage the Committee to vote to confirm the entire panel.

I believe you have our letter amongst a coalition of folks supporting the industry and range representatives in front of you today. They are highly qualified, highly experienced, very ethical and honorable people who are addressing important issues in front of the state.

And we encourage your support for their confirmation.

One issue I would like to also point out is that the coho issue has been in front of the Board of Forestry for a decade. And the Board of Forestry has adopted a vast array of rules over that period of time to address coho.

This is a continuing process: the coho considerations; the threatened and impaired watershed rules; a whole array of rules that have been before them, as well as this new challenge that is front of them.

So, I would encourage your empaneling and moving forward to address those issues. Thank you.

MS. CREMERS: Mr. Chairman and Members of the Committee, Noelle Cremers with the California Farm Bureau

Federation.

I'd like to echo everyone's comments. We're in support of all of the appointees here before you today. We know that they will do a good job, being open minded, figuring out solutions of how we can manage our natural resources and find on-the-ground ways to make sure that coho are protected, and that we figure -- find solutions that work for landowners and that provide protection for the fish.

And these appointees are willing to listen to both sides and craft workable regulations, workable solutions. And we urge that you vote to appoint these people.

Thank you.

MS. DUNCAN: Mr. Chair and Members, Denise Duncan, representing the Lumber Association of California and Nevada.

I would also like to echo the previous comments, particularly have worked in the past with Pam. We believe that she -- her goal is conflict resolution, and we look forward to working with her in the future.

Thank you.

MR. QUIRMBACH: Mr. Chair, Members of the committee, I'm Chris Quirmbach. I'm a forester with Timber Products Company. We manage approximately 115,000 acres in rural northern -- forest land in rural Northern California.

We do support the entire slate of nominees before you.

If I could just quickly state some of our reasons. We believe all the nominees have shown a strong

1 interest in forestry, range land, and fire protection issues, as
2 evidenced by their high attendance at meetings, not only the
3 full board meetings, but committee meetings, and their
4 willingness to listen to all sides of the discussions.
5 There is also a high level of knowledge within
6 this slate of nominees.
7 Second, the nominees are diverse in terms of
8 their geographic location, with nominees from the southern tips
9 and the northern tips of the state, and in between. And also,
10 they're also diverse in terms of their backgrounds, you know,
11 with them providing progressive approaches to the forestry,
12 range land, and protection issues.
13 I know there's been some discussion of confirming
14 only a subset of the nominees. And we believe that this would
15 upset this diversity and upset the balance that is in front of
16 you.
17 So in summary, now more than ever, given the
18 complexity, we've heard about that already in the first half
19 hour of the meeting, the complexity and the importance of the
20 issues before the Board of Forestry, our company believes we
21 need a strong, balanced board to provide good leadership on
22 these issues. We recommend confirmation of all of the nominees
23 with their diverse backgrounds and keen interests.
24 Thank you.
25 MR. WELDON: Mr. Chairman and Members, I'm Dan
26 Weldon with the Forest Landowners of California.
27 We do support all five of these nominees, or
28 these candidates, I should say.

And we are -- I served with Ms. Giacomini on the Coho Recovery Team, and I agree with her that we need to make sure that we have sound science baking up these regulations. And over the next year, this Board of Forestry will give fair and equitable treatment to consideration of those coho regulations as they are presented before the Board of Forestry,

MR. MASON: Good afternoon, Chairman Perata, Members of the Committee. Paul Mason for Sierra Club California.

I actually find I know these members as well as anybody else in the room, besides their families. I go all the Board of Forestry meetings. It's been three days a month every month with these folks.

And they're all very nice people. I've struggled a lot on how to represent my concerns, while also acknowledging that they're smart, nice people who are doing a lot of work for a nominal per diem. And I have to respect that, and I appreciate that.

I particularly want to identify Stan Dixon, who's done a great job as Chair over the last -- well, over the last several years. But he's really, over time, grown into that role. He goes to all the committee meetings, is very immersed in what's going on, and I really appreciate that work.

Mr. Saito has, you know, clearly a steep learning curve as far as a lot of the regulatory stuff, but as we have dealt with some conservancies and other things that are more in his background, you know, he's clearly going to be a good board member over time. We support both of those board members.

I do want to raise some concerns with the other board members. It's a little bit awkward to view them as a group from behind.

We've heard a lot about, you know, we need to review the rules, do the science, you know, make sure they're scientifically justified.

I think oftentimes the industry members in particular overreach there. We actually have an entire state agency, the Department of Fish and Game, that is responsible for evaluating what sort of measures are necessary to protect coho. They have said, you know, these 2112 regulations are what's going to be necessary to protect coho. The National Marine Fishery Service at the federal level has been saying for six years now that the existing Forest Practice Rules don't go far enough. And yet, it seems like the only discussion we have at board level is about how to, you know, modify or chip away at them. And the proposals that would actually improve the situation get on a slow boat and, you know, don't move all that expeditiously.

Rather than reading you a long statement here, I'm going to try to omit covering some of the things that Senator Bowen has already raised.

As you saw in the letter that I sent yesterday, and I apologize for sending one so late, but I did want to weigh in after seeing the letter that Secretary Chrisman had sent yesterday, which I thought muddied the waters somewhat.

We do particularly have concerns with Gary Rynearson as a representative, given what we perceive as an

1 inherent conflict between his role as an advocate for Green
2 Diamond, second largest timber company in the state, and his
3 responsibility as a board member to act in the public interest.
4 That's the responsibility of all board members, both the public
5 representatives and the industry representatives, that, at the
6 end of the day, they're all supposed to be acting in public
7 interest.
8 I'd also like to express, you know, some
9 frustration that all of the seats dedicated to timber interests
10 are held by the California Forestry Association, which is
11 constantly opposing any rule improvement and ourselves, Sierra
12 Club, other conservation organizations. Just spent $20,000 or
13 more helping to defend from a Forestry Association lawsuit so
14 overturn the very listing of the -- the state listing of the
15 coho salmon that we've been talking about for the last half hour
16 or so.
17 So, it's somewhat frustrating when an
18 organization dedicated to opposing these rules holds three of
19 the seats on the board.
20 Again, you know, I need to flag these as concerns
21 because I think there's a fundamental conflict between having,
22 you know, those dueling roles, while individually they're really
23 quite nice people.
24 So, we support the two public members, and have
25 concerns with the three industry and ranching members.
26 And I do have a lot of experience with the board,
27 and I'd be happy to answer any questions that the Committee has.
28 CHAIRMAN PERATA: Thank you. Any questions?

Anyone else?

MR. SHELLITO: Thank you, Mr. Chairman. Jeff Shellito. I represent Cal Trout, a statewide fisheries group that was founded 35 years ago.

We were one of the signatories in a letter sent last week, along with the Sierra Club, the Commercial Salmon Fishermen, represented by Zeke Grader, along with PCL, Defenders of Wildlife.

I just want to echo the comments that Paul Mason made. I know two of the board members from previous dealings when I -- a prior job working in the Legislature.

We're mainly concerned about the slowness that the board is proceeding with these -- you know, improving the rules as they relate to impacts on salmon habitat.

I think Senator Bowen covered a lot of those issues, that basically all fishing for coho salmon has been banned, both recreationally and commercially, for over ten years. The problems with the salmon returns on the Klamath are responsible for the total shutdown in all ocean fishing, both commercially and recreationally for salmon, even species that are not in jeopardy.

And we think that the board needs to do its part to start coming up with the solution to this. It's not just taking the dams out on the Klamath. It's not just dealing with irrigation diversions. There needs to be some wholesale changes to the Forestry Rules.

And I think part of the problem is that the board now is supposed to be constructed where you have five public

members and four industry members. And right now, it's a four-four split because you have a vacancy. And I think that, in effect, gives a de facto majority to the industry in terms of blocking anything that would advance the agenda on improving moving the rules.

So, we're hopeful that that vacancy will be filled soon by the Governor and restore what we think is something that's currently not in balance.

I know it's late, and I just want to appreciate your hearing me out. Thank you.

CHAIRMAN PERATA: Thank you.

Anyone further?

SENATOR ASHBURN: I'll make a motion for all five to approve.

CHAIRMAN PERATA: Any further discussion.

I had an opportunity about two or three weeks ago to go up and spend about four or five hours in Anderson at Sierra Pacific Industries. It's the first time I'd occasioned the opportunity of walking around a saw mill. I added it to the list of things that I'm not going to do when I grow up, is work at saw mill.

But I had a very engaging discussion for a couple of hours about the industry. A couple of things that struck me, in addition to how little I knew, was that how much science is now going into the discussion regarding not only forest products but the surrounding environs. I came away quite impressed.

But I also know that the last point that was made by Mr. Shellito, that the vacancy creates an imbalance.

So, what I want to do is, I'd like to see this thing get resolved. And while this might feel like hostage taking, I don't want it to feel that way, but one of you is going to remain in Committee.

You don't have to stay here. And we'll bring in food.

[Laughter.]

CHAIRMAN PERATA: I'm going to hold one member in Committee who has time left on the clock, because I need to have somebody come back in January and talk to us about what has happened. If we don't do that, we will have no conversation or communication at all. So, this is really for the purpose of making sure that the administration's commitment to the coho salmon issue is maintained as a present concern.

You may not have another appointee or a month, two months, four months.

So, what I'd like to do is to amend the motion to have four of you released and one held.

And do not consider this a hostile action.

SENATOR BOWEN: Consider it musical chairs.

CHAIRMAN PERATA: I don't want you to consider this to be a hostile action. This is something that is important.

If you weren't here previously for the Parole hearing, a number of times what we've tried to do through this Committee simply hasn't been gotten right, and so the best way to do that is to make sure that we have somebody that we can have come back.

You can always come back and visit, but you're under no obligation to.

One of you will be able to come back and visit us more frequently, and Gary, you're going to be the nominee. You've got the most experience. You were an appointee of the Democratic Governor, the Republican Governor. And you've got time in grade, and I think can be the most -- I don't want to say the most reliable.

I think when you come back, you can talk to us and tell us something about what has happened. And if it hasn't happened, I think you'd be honest enough to say.

Not that the rest of you are dishonest.

I'm going to stop here.

[Laughter.]

CHAIRMAN PERATA: What I'd like to do is -- I don't know if a split motion, do I have to split that motion?

SENATOR ASHBURN: I'll withdraw my motion and make a motion to approve the four, excluding Mr. Rynearson.

CHAIRMAN PERATA: Right. And then, this is being held in Committee. You've still got until January, so you've got breathing room.

The rest of you are just by dint of when you got appointed.

So, we have a motion to approve. Without objection, that will be unanimous, four-zero, with Senator Battin unavoidably detained.

And then we'll see you back here, mark your calendar, the first Wednesday in January.

What I would ask you to do is, Senator Bowen in particular, obviously, has some very pointed concerns here. Maybe as time permits, you could be more specific, or take her fishing.

MR. RYNEARSON: Mr. Chairman, I'd be happy to meet with you or any Members, including Senator Bowen, to address any of the concerns.

CHAIRMAN PERATA: We have some staff, too, that I'd like you to talk with, just so we kind of sort this thing out. I think there's a great opportunity here right now.

SENATOR ASHBURN: I just want to make one point, that in making the motion, and then amending the motion with respect to Mr. Rynearson, my understanding is that your appointment is valid through the 15th of January.

MR. RYNEARSON: I was appointed on the 15th of March this year.

CHAIRMAN PERATA: Oh, you've got lots of time.

SENATOR ASHBURN: And there's nothing that precludes you from participating actively, fully, and completely in the business of the board during that period of time, pending the further action of the Committee after the first of the year.

CHAIRMAN PERATA: And we won't tell anybody that you were a Governor Davis appointee, twice.

Thank you all. Again, thank you for what you are doing. It's important.

We'll encourage the Governor to give you another playmate between now and as soon as we can. Thank you all for being here.

Thanks to everybody who stayed so late. Drinks are all the house if you go over to Chops.

[Laughter.]

MS. GIACOMINI: Thank you, Senators.

MR. DIXON: Thank you.

CHAIRMAN PERATA: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 5:25 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

ILITARY DEPARTMENT
FFICE OF THE ADJUTANT GENERAL
00 Goethe Road – P.O. Box 269101
cramento, California 95826-9101

July 14, 2006

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room #420
Sacramento, California 95814

Dear Ms. Sabelhaus:

I am deeply honored that Governor Schwarzenegger selected me to lead the military forces of the State of California. Since the September 11, 2001 attacks on America, the California National Guard has deployed over 21,000 Soldiers and Airmen in California and around the world. The Guard has consistently responded to the call of our State and Nation: from earthquake to flood, forest fires to civil disturbance, and homeland defense to border security. It is my honor to be considered for the position of The Adjutant General, and I will use my training, experience, and dedication to lead this truly outstanding organization and ensure that civilian leaders, citizens, and the Soldiers and Airmen of the Guard, share the confidence that I have in it.

Enclosed, please find my response to the June 22nd correspondence from Chairman Don Perata, as well as my Form 700, Statement of Economic Interest. Should you require any additional information or have any questions, please contact me directly at (916) 854-3500 or Lieutenant Colonel Michael Wells of my Governmental Affairs office at (916) 854-3705.

Respectfully,

William H. Wade II
Major General
The Adjutant General

Senate Confirmation
Response to Senate Rules Committee Questions
Major General William H. Wade II
July 14, 2006

Background

1. What goals do you hope to accomplish during your tenure as Adjutant General?

As the Adjutant General, I will use my leadership and sound fiscal stewardship to reform and transform the Department and the California National Guard into a vision of "California's Professional Military Force, serving our state and nation. Always Ready, Always there". To that end, I directed and supervised the preparation of, and have approved a detailed strategic plan. This plan requires a range of coordinated actions for both the near term and distant future by identifying the ends, ways, and means to achieve success.

The plan recognizes the unique contributions and requirements of all subordinate elements of the Department, and has goals specific for each element. For the Department, the strategy includes accomplishing departmental reform as well as specific actions to improve personnel, administrative, logistical and training systems. The departmental plan also focuses on organizational readiness and preparedness, improving our strategic and command information programs, and planning for and accomplishing the transformation of the total force in preparation for future missions.

The California Army National Guard, in support of the departmental goals, is focusing on strength, training, personnel and logistics management, and the measured transformation of the Army National Guard units in preparation for emerging missions at both the state and federal level.

Likewise, the California Air National Guard has established goals dealing with strength, readiness, and the transformation of the California Air National Guard into new missions in anticipation of future requirements, and achieving the necessary resources to ensure success. Additionally, the California Air National Guard has greatly increased their focus on planning for the use of Air National Guard capabilities in support of the state mission.

The California State Military Reserve, as California's voluntary militia, has established goals that will increase their ability to support the state and the Army and Air National Guard, develop comprehensive strength maintenance and training programs for their volunteers, organize for the future while maintaining the flexibility so valued to the state, and care for the members and their families.

2. What do you perceive to be the most important issues confronting the California National Guard in both the near and distant future?

The most important issue confronting the California National Guard is to earn the confidence of the civilian leaders, the people of California, and our Soldiers and Airmen to better serve the community, state, and nation.

I have initiated a three phase process I would phrase as "right the ship," "set the course," and "get underway."

To "right the ship" I am reforming the California National Guard's organizational structure and establishing strength in key leadership positions. This requires a number of specific actions, which I have directed, and are underway. The California Military Department is well into the process of evaluating manpower allocations to validate spaces, grades, functions, and criteria for specific employment status. This process will establish and validate criteria for managing the personnel assets of the Department. I have directed that all functions and titles be evaluated to ensure that tasks, functions, and activities are organizationally aligned in accordance with state and federal models, guidelines, and regulations. To the maximum extent possible, the approved federal organizational designs will be used to organize the entire Department. This action was initiated upon my appointment. The outcome of this action eliminated the use of non-standard or confusing titles, disestablished ad hoc units, dissolved the stove piped structure I inherited, and demonstrated my expectations that the Department could organize and align doctrinally with our higher headquarters, the National Guard Bureau. I instituted weekly departmental update briefings that have facilitated the staff coordination across the various directorates which resulted in greater efficiency within the Department

To "set the course," I took the entire leadership of the Department to Beale Air Force Base for one week (March 2006) to accomplish strategic planning, organizational coordination, and team building. The outcome of that meeting was the development of a comprehensive plan that acknowledges the unique aspects of the various elements of the Department and allows them to retain that which makes them exceptional, yet knit the components into a unified team. The results of that offsite are available in the Department's updated strategic plan which outlines the mission, vision, core competencies, priority issues, and organizational and operational goals for the future. The strategic plan, with the associated goals, accomplishes four key outcomes:

- First, it provides direction to the Joint Force Headquarters on the critical elements to support the components and to achieve validation by the National Guard Bureau as a Joint Operating Activity. With that validation, the Department can serve as the single coordinating element for all military response, including Active and Reserve, as well as other components to natural and man-made disasters. This validation, tentatively scheduled for 2007, will greatly leverage the ability of the department to bring support to the state in times of emergencies.

- The second outcome is a measured, realistic approach to grow the capabilities of the Army National Guard. This potential growth will provide additional employment opportunities for Californians, increase the ability of the Department to respond to the needs of the federal and state government, and generate considerable economic impact at the local and state levels.

- The third outcome is to focus the actions of the California Air National Guard to move into missions of the future. The movement to future missions will reduce the overall impacts of reductions within the total Air Force family and retain a viable California Air National Guard.

- The final outcome of this plan is to formalize the integration of the State Military Reserve as an integral element within the Department.

To "get underway," the Department has undertaken a number of initiatives that will establish our ability to support the federal and state missions in the future.

- The Army National Guard is transforming into a Brigade Centric organization which will increase the agility to which they can respond to any assigned mission. This increases the number of operational headquarters within the state that can serve as Joint Task Forces in response to emergencies.

- The Air National Guard has begun to move into missions that support the active duty Air Force in normal military operations such as space, unmanned aerial aircraft, intelligence, and creating network-centric and cyber warfare capabilities. These activities support the current and future Air Force in support of the Global War on Terrorism.

- The Department has begun a coordinated effort to match future requirements with future capabilities and to develop the plans necessary to replace aging equipment and infrastructure. This view to the future will require new capabilities for training, stationing of units, approaches to recruiting, and change the complexion of the Department as we know it now.

- To improve the ability of the Department to influence our preparedness for the future, I have increased the planning capabilities by instituting a formalized planning process for strategic, operational, and tactical planning, and I have organizationally aligned our Governmental Affairs Office to the Strategic Planning Office.

- Future actions that require additional clarity from the federal and state level include specific outcomes for facilities, locations, unit types, and end-strengths.

Each of these issues require a more clearly defined understanding of the federal and state programming of resources; however, the improved ability of the Department to collaboratively scan the environment and coordinate across organizational lines will facilitate developing this clarity in a more timely and effective manner.

As always, recruiting and retention remain a constant challenge. I believe the newest challenges facing the California Military Department in the distant future are recovering and refitting from unprecedented deployments; the unanticipated change, and disparity between the historical role of the National Guard; and the role that is currently emerging. History has shown that the recovery and refitting of a reserve force following wide-scale deployments is a time-consuming and expensive process, and that process cannot begin in earnest before the completion of current deployments. While deployments continue, the peak of the deployments for the California National Guard appears to be behind us, and given the current status of operations, the last of our currently and programmed deployed personnel will not return to California for up to two years.

California, like other states and forces, has been required to leave behind considerable quantities of equipment for follow-on forces, and the equipment on hand, in many cases, has reached or exceeded its design life. The current programming to return the California National Guard to its full compliment of equipment requires many years. The shortage of modernized equipment reduces the ability of the force to train, increases the load on existing on-hand equipment, and drives up maintenance, sustainment, and replacement costs. Additionally, the California Army National Guard is housed in antiquated structures, designed over fifty years ago, and reminiscent of a much different force; yet neither the state nor the federal budget appears to have the capability to replace these sub-standard facilities at a rate to match the operational demand.

The Army National Guard is transforming from a strategic reserve to an operational force. This translates into units that may be programmed for scheduled rotations once every six years. Recruiting reserve component soldiers that are expected to deploy up to 18 percent of the time will dramatically change the incentives, expectations, and support requirements for the force. The Army, and by extension the Army National Guard, is rapidly becoming more technologically centric which will demand better educated, more technologically trained soldiers. The competition for youth with these skills and abilities will increase exponentially and may well outstrip the capability of our education systems to provide that background.

These challenges will require a comprehensive multi-faceted approach that seeks non-traditional and unique resolutions. Such an approach must begin immediately, and represent a sustained effort of the entire organization. Rest assured, building for the future is my most important contribution to the Department, and will be undertaken as soon as the immediate actions have created the sound foundation on which long-range approaches must be built.

Every citizen of California must have full confidence in the abilities of their National Guard during emergencies, peacetime, and during deployments for war. It is this unrestricted confidence that will ensure the support of the public and elected officials, will support the recruiting goals of the Department, and will position the state to receive new missions and new units for the future.

Recruiting

In April ABC News reported that the Army is recruiting below last year's levels, which was the first time it missed its recruiting goal since 1999.

3. What are your recruiting goals for this year? Do you anticipate meeting them? What strategic steps have you been taking to ensure your success in meeting these goals?

Since my appointment as the Adjutant General in September 2005, I have directed my Recruiting and Retention teams to achieve a strength goal of 16,000 for the Army National Guard, 4,757 for the Air National Guard, and for the State Military Reserve to exceed their current strength of 560 for CY 06.

As a top priority, we recently updated our department's strategic plan, setting ambitious strength goals for both the Army and Air Guard. I am optimistic that we are going to meet these goals. My focus is on recruiting qualified individuals and retaining skilled Soldiers and Airmen. This is absolutely essential for maintaining strong, highly capable units prepared to fulfill assigned missions.

Our largest component, the Army Guard, has a goal of a strength net gain of 300-400 soldiers over the next two federal fiscal years. The following strategic steps are going to allow us to meet this goal:

- The size of the Army Guard recruiting and retention force increased by 33 percent (from 169 to 198 recruiters, and from 13 to 65 career counselors). Additionally, we recently started to benefit from a (federal) civilian contract recruiting initiative, whereby we build the force from within and provide encouragement for Army and Air Guardsmen to recruit for their own units as a sub-contractor under a salary of $2,000 per enlistment.

- The Commander of the Army National Guard is conducting monthly command focus meetings, centering on accountability and management of unit strength from brigade down to company level.

- The Army Guard is connecting with more high schools and colleges, doubling our Department of Defense market share over the past 20 months, progressing from 5.7 percent in October 2004 to harnessing 11.4 percent of the non-prior service market share in May 2006.

- We continue to offer federal incentives for various types of enlistments, re-enlistments, student loan repayment and GI Bill up to $20,000.

The California Air National Guard has 20 authorized recruiters and 20 assigned. In addition the Air Guard has assigned one Recruiting and Retention Superintendent. I have set goals for the Air Guard to reduce their loss rate to 10 percent and achieve 98 percent of their authorized strength by the end of federal FY 2008. Several of our Air Guard units are either in the midst of conversion or preparing for transformation into new missions with greater long-term viability, and this goal will support that transformation.

With the uncertainty of changing missions, impact of the Base Realignment and Closure process, many members requested and were granted permission to transfer to other organizations to allow them to continue their military service in their chosen specialty. I anticipate additional losses in the near term. However, I am encouraged by the strategic initiatives in motion for enhancing recruiting and retention. The initiatives underway to assist meeting the California Air National Guard strength goals include:

- The Air National Guard is continuing to engage with National Guard Bureau and United States Air Force officials to accelerate progress on our transformation objectives to ensure all units are assigned missions affording long-term stability for the next two decades and beyond. For example, we are currently pursuing an intelligence mission for the active duty Air Force with the 222nd Combat Communications Squadron and a space mission for the active duty Air Force with 216th Engineering Installation Squadron.

- The Air National Guard has intensified efforts to further develop the abilities of our recruiting and retention team by adopting the active duty Air Force new tracking system which provides useful information for trend analysis. The trend analysis will allow the organizations to capitalize on their strengths and target training for those areas that need attention.

- In the past, our Air Guard recruiters focused solely on the unit they were assigned. Now they are encouraged to actively recruit for all Air Guard units in the state, thus expanding their territory in the past two years. Eight percent of accessions can be directly attributed to recruiters placing new members in units other than their own. Additionally, teamwork among recruiters statewide has been further enhanced.

- The recruiters for the Air National Guard are capitalizing on monthly leads from the National Guard Bureau recruiting website. The website which includes an interactive chat room is extremely attractive to today's youth.

The recruiting goal for the State Military Reserve is to recruit volunteers to meet specific needs as identified by the two service components and the Joint Staff. The California State Military Reserve is transforming to take a more active role in Joint Operations and extend the capabilities of the entire Department including both federal and state missions.

While this myriad of initiatives and strategic steps will take time to demonstrate the desired outcome, the Department has initiated and continues to pursue the actions necessary to meet the strength and recruiting goals of the future. I am confident the California Army and Air National Guard and the State Military Reserve will reach their respective strength goals through federal FY 2008. All Soldiers and Airmen have a role in retaining and recruiting quality personnel, particularly officers and noncommissioned officers. I will continue to expect leaders at all levels to effectively communicate to Soldiers and Airmen the importance of their individual contributions and service to our great State and nation. I firmly believe that individuals who understand the importance of their contributions have greater motivation to excel.

4. What is the current strength of all components of the State Military Forces? What is the authorized number of soldiers versus the actual and assigned number of soldiers for all components of the State Military Forces? What are the future strength projections for the State Military Force?

The strength of all components as of 30 June 2006 is 20.643. The California Army National Guard is at 15,678. The Air Guard is at 4,405 and the State Military Reserve has 560 active volunteers.

When asked to draw a comparison between authorized and assigned for the Army Guard, I have to look from our legacy force to the Army's transformational force. Our "authorized" strength is shifting from 19,904 to 15,801 beginning federal FY 2008. The shift of our authorized strength does not reflect a reduction in capabilities for California, rather aligns our authorized strength with our demonstrated ability to sustain a force.

Federal funding resources have already begun to be allocated against the 2008 authorization of 15,801. Our current Army strength is 99.2 percent of our future force. The California Army National Guard end of the year strength, except for a one-year anomaly, has remained relatively constant with 16,000 soldiers for the past decade.

As the California Army National Guard demonstrates an ability to recruit and sustain a force greater than what is currently projected, we will have the opportunity to request additional units and force authorizations from the National Guard Bureau.

The California Air National Guard is currently authorized a total of 4,854 and as of 30 June 2006 has 4,405 assigned. Despite the significant turbulence and uncertainty I previously described for the Air Guard, they have maintained consistent success with operational missions and have maintained strength, exceeding 91 percent. As outlined

under the "strategic steps", the Air Guard has an aggressive plan for increasing strength to 98 percent over the next 24 months.

The California State Military Reserve is a cadre force of volunteers. The Military Department establishes the structure and strength goals for the California State Military Reserve in response to current mission requirements. Based on emerging missions, I anticipate the California State Military Reserve may need to expand membership upwards to 1,000-1,100 members over the next several years.

5. How is the war in Iraq affecting recruiting? How is its effect being taken into consideration with respect to recruiting?

As you might expect, the war in Iraq has an effect on recruiting. The potential applicants, and particularly their parents, have concerns about the possibility of overseas deployments to troubled parts of world, like Iraq and Afghanistan. To help mitigate this, our recruiters are truthful when addressing these valid concerns of applicants and their apprehensive parents. In fact, whenever possible, we like to have a parent present when conducting meetings with applicants. Having parents involved from the beginning of the recruiting process establishes trust in the recruiter and the National Guard. We do not hide the fact that there are often major sacrifices associated with military service.

We take great pride in sharing with applicants, their parents, and others that many Soldiers and Airmen of the California National Guard have served with distinction throughout the world. This service includes supporting the Global War on Terrorism, humanitarian missions at home and abroad, and our State Partnership with Ukraine. However, appealing to patriotism and pride in serving does not always resonate with today's youth and their parents; they are interested in benefits, particularly education.

California offers virtually nothing in the way of state funded incentives or benefits to its National Guard members. We are at a distinct disadvantage compared to the National Guard of most other states. For example, Ohio has a scholarship program for its National Guard members that pays up to 100 percent tuition and fees at state assisted colleges and universities or an equivalent amount for those attending a private university. We need to establish comparable state educational benefits for the Soldiers and Airmen serving in the California National Guard. This is where I can use your help. California needs to establish a state educational benefit for the Soldiers and Airmen serving in the California National Guard. I am working with the Governor and members of the Legislature to establish such incentives. I am asking for your support. The more incentives offered the better our chances of attracting and keeping the kind of people we want and need.

Troop Readiness

An April 2006 Fayetteville Observer article attributes General Dan K. McNeill, commanding general of U.S. Army Forces Command, as telling of a California National Guard company that was able to mobilize only seven of a 170 soldier company. "The other 163 had to be gathered from over 65 units in over 49 different locations," {McNeill} said, "Of those, 140 had the wrong specialties and needed training."

6. Was this an isolated incident, or are there mobilization and readiness issues confronting the California National Guard?

The Fayetteville Observer article quoted a speech given by the Commander, U.S. Forces Command in which the larger theme was the need to fully resource a modernized Army, ready for a different kind of war and a different adversary. The facts as presented were not construed as an indictment of the California National Guard, but rather as a wake-up call to revise the previous cold war system to one poised and prepared for the conflict of the future.

This was an isolated incident. Normally, units are afforded up to two years to form and achieve readiness. The unit in question was recently formed and had yet to fully recruit to its assigned strength, however, the needs of the U.S. Army prevailed and the unit was called into service well in advance of its programmed activation date.
The California Army National Guard responded to the call and cross-leveled personnel and equipment to meet the mobilization requirement. .

Under current regulations, Army National Guard units are considered ready in Title 32 status by the Active Army when maintaining an assigned strength of 85 percent. When mobilized under Title 10 status, Army National Guard units are required to report to the mobilization station with 100 percent of authorized strength. In addition, all members are required to meet all medical, dental, and administrative requirements for deployment. Frequently medical, dental or administrative problems are identified during pre-mobilization checks which may eliminate a unit member from deployment.

The requirement to field units with 100 percent deployable members always require cross-leveling unit members from non-deployed units into deploying units. The extent of cross-leveling for this unit was certainly more extensive than for units that had been in existence for several years. It was the extent of cross-leveling that made this particular deployment an isolated incident.

Other laws and policies that would cause the California National Guard to cross-level soldiers include:

- Current Federal Law (10 USC 12302), enacted in 1953 to protect reservists from prolonged mobilization and deployment requires that reservists cannot be ordered to active duty for more than 24 consecutive months.

- Under Partial Mobilization current Department of Defense policy provides guidance and set precedence as indicated below:

  a. Once a reserve service member has been involuntary mobilized they will not be involuntarily mobilized again.

  b. No soldier will accumulate more than 730 days Partial Mobilization time (24 months). In effect, this policy changed the U.S. Code (10 USC 12302) to be interpreted as cumulative rather than consecutive.

  c. Soldiers may volunteer for up to 730 additional days when assigned within the Continental United States or 1,095 days outside the Continental United States based on needs of the Army beyond the Partial Mobilization.

The California Army National Guard projects that approximately 2,000 current members have not been previously mobilized. As outlined above, the California National Guard will continue to cross-level personnel to meet future mobilization requirements. Our mobilization history and our support to this state and nation are a success story and a tribute to our Soldiers and their families.

7. What are your troop and equipment deployment capabilities within 12, 24, and 48 hours in the event of a disaster?

We use a graduated response plan that allows the immediate deployment of liaison officers and planners to assess the need and serve as the eyes and ears of the Joint Force Headquarters planning and execution staff. The Department uses a collaborative planning and preparation process to allow a more timely response to meet mission requirements. The Joint Force Headquarters completes the planning while the field units complete preparations. This coordinated action allows the Department to generate the most appropriate response in the shortest time. For planning purposes, the following timeline is used:

<u>0-4 Hours</u>

- Liaison Officers dispatched to supported agencies in Sacramento and to OES Regions.

- Augmentation of the duty staff at the Joint Force Headquarters Joint Operations Center in Sacramento begins.

- Initial Response Team(s) deployed from the Civil Support Teams (Hayward and Los Alamitos) in direct support to civilian Incident Commander.

4-6 Hours

- Two, 22-member Civil Support Teams based in Hayward and Los Alamitos are dispatched to the impacted area. Civil Support Teams are trained and equipped to respond to a Weapons of Mass Destruction event, but can be used to support other emergencies. Each team is capable of doing an initial assessment and support the civilian Incident Commander with a communications suite and planning capability.

- Limited aviation support for initial over flights, such as reconnaissance or command and control helicopters is available. Liaison teams dispatched to the incident command site.

- The Joint Operation Center in Sacramento is fully manned.

12-16 Hours

- Two 100-member Security Force units (one north, one south) dispatched to the impacted area as a Quick Response Force.

- One Chemical, Biological, Radiological, Nuclear, High-Yield Explosive Emergency Response Force Package unit, based in Sacramento, is available for deployment. The unit has 130 personnel assigned and is trained in conducting light urban search and rescue in a contaminated environment. Other unit capabilities include patient decontamination and as a security force.

- Two Joint Task Force Headquarters, each commanded by a Colonel or General Officer, can be deployed to the impacted area to conduct an initial assessment, begin coordination with civilian officials, and prepare to receive follow-on forces. Each Joint Task Force Headquarters includes an Incident Commander's Command, Control, and Communications Unit (IC4U) which is a vehicle that allows communications interoperability among military and civilian elements.

- Limited (2-4 aircraft) Air National Guard transport aircraft are available to begin flying troops or civilian law enforcement officers.

- Additional Army and Air National Guard helicopters available.

24 Hours

The California National Guard maintains plans to deploy up to 2,500 members providing a range of capabilities as outlined below:

- Four 500-member security force battalions dispatched to the impacted area. Two battalions formed from units in Northern and Southern California.
- Four transportation truck companies available to move personnel or supplies. Each company has 10-15 cargo trucks.
- One 100-member Air National Guard Security Police element dispatched to the impacted area.
- Joint reception team established at two Air National Guard bases in Northern and Southern California to assist units arriving from other parts of the state or troops from outside the state in offloading from aircraft and moving to the impacted area.
- All operational fixed and rotary wing California National Guard aircraft available for employment.
- All California National Guard headquarters, administrative elements, logistical units, and bases fully-staffed and able to support the response.
- Quick Response Forces from neighboring states' National Guard units begin arriving (if necessary).

72 Hours

- The California National Guard maintains the capability to deploy up to 7,500 members within approximately 72 hours.
- If necessary, multiple battalion-sized (approximately 500 personnel each) units from the National Guard of other states and Active Army/Marine Corps units can arrive and be integrated into the response effort.

It is important, however, to not focus solely on numbers. Deploying all available forces to the field leaves no support structure or ability to conduct sustained operations. The emergency response system is, like the U.S. Army and the U.S. Air Force, moving away from planning for mass response to capabilities based response. This concept for planning has been integrated into the Military Department, and it is imperative to consider responding with capabilities rather than numbers. For example, attempting to quickly mass forces that draw from the Air National Guard can quickly diminish or eliminate the California National Guard's

ability to provide airlift capability. Another example would be to plan and conduct evacuations using many ground vehicles when a few helicopters or other assets would provide the same capabilities in an equally efficient or more effective manner. Finally, with the transition of the headquarters to a Joint Force Headquarters, in the event of a large scale disaster or emergency, the Department will be prepared to integrate the capabilities of other services and components into the emergency response to meet the requests of the local jurisdictions.

8. Please describe the CNG's response to Hurricane Katrina, beginning from the initial oral inquiry from officials in Louisiana. How many troops were requested in the very first contact with the CNG? How many troops were requested in writing? How many were actually deployed?

On 31 August 2005 at 1000 hours Pacific Daylight Time, Lieutenant General Blum, Chief of the National Guard Bureau held a nationwide conference call with the Adjutant General of each state. Lieutenant General Blum requested that each large state mobilize and deploy an initial force package of 500 personnel to Louisiana, with the ability to self sustain for not less than five days to stabilize the situation.

National Guard Bureau's written request for 500 personnel arrived at approximately 1300 hours Pacific Daylight Time, 31 August 2005. The first warning order was published at 1430 hours with additional clarification in a second warning order at 1800 hours. At 2023 hours Louisiana Governor Blanco's staff emailed a request for military assistance from California. That request specified the number and type of troops requested.

The California National Guard responded by having 486 personnel on the ground in Louisiana on 3 September 2005, and another 155 on the ground in Louisiana for a total of 641 personnel by the morning of 4 September 2005. Once the situation was stabilized and communications had been restored, all subsequent requests for assistance and support were handled through the Emergency Management Assistance Compact process. On 20 September 2005, we received a request from the National Guard Bureau for a 400 person security force to replace our initial force of 500 personnel. We met National Guard Bureau's requirement to assemble the force by 27 September 2005.

In total, the California National Guard placed 1,835 Soldiers and Airmen on duty in support of Hurricane Katrina and Hurricane Rita relief operations.

A March *Army Times* article discusses how the 1st Battalion of the 184th Infantry deployed to Iraq was plagued with "scandals and criminal charges on top of heavy casualties." While over time the battalion corrected itself, eventually being awarded with 14 Bronze Stars for valor, 48 Bronze Stars for merit, and 80 Purple Hearts, the article quotes you as saying, "It was a good unit that was sent to Iraq, though, like many Guard and Reserve units, not battle-hardened or battle tested."

9. Are California National Guard soldiers sufficiently trained prior to being deployed to Iraq?

Soldiers and Airmen are trained to Department of the Army and Department of the Air Force standards.

Every Soldier must complete Basic Combat Training and hold a valid Military Occupational Specialty or in the case of officers, a valid Area of Concentration. Additionally, each Soldier receives individual warrior training and battle drills, and is validated by the Active Army prior to deployment. Every Soldier is tested by the Active Army at the mobilization station. Each Soldier must successfully demonstrate proficiency in the required tasks to be eligible for deployment. The tasks are defined by the Active Army and reflect specific skills or abilities that have been identified by the theater commander as essential to the completion of their mission.

Warrior and battle drill training and validation include:

Warrior Tasks

- Weapons: (16-17 Tasks)
- Communications: (4-5 Tasks)
- Joint Urban Operations (3 Tasks)
- Movement (7-8 Tasks)
- Fight (15 Tasks)

Core Battle Drills (Details provided to demonstrate the theater specific drills trained prior to deployment)

- React to contact (visual, Improvised Explosive Device, direct fire [includes Rocket Propelled Grenade])
- Avoid ambush/contact
- React to ambush
- React to indirect (artillery) fire
- React to chemical attack
- Break contact with combatants
- Dismount a vehicle
- Evacuate injured personnel from vehicle
- Secure at a halt

In addition to individual training, each unit ultimately trains to company and battalion level proficiency and in all cases is validated at their respective mobilization station by Active Duty personnel based on Active Duty standards.

In the case of task forces or brigade-sized organizations, there is a culminating event like a Mission Readiness Exercise that is conducted to fully validate the unit's preparedness for the mission at one of the Collective Training Centers such as the National Training Center, Fort Irwin, California or the Joint Readiness Training Center, Fort Polk, Louisiana.

Additionally, every Airman must demonstrate proficiency and qualify for the appropriate skill level for their grade and assignment and must complete an array of general training requirements on a recurring basis including weapons qualifications, self-aide and buddy care, chemical warfare training, laws of armed conflict, information assurance awareness, explosive ordinance recognition, family readiness, and force protection/anti-terrorism training to retain their ability to deploy with as little as 72 hours notice.

Additional training is also provided in preparation for specific mission requirements such as convoy procedures and evade capture training. As with the other services, no Air National Guard member enters a combat theater without meeting all of the training and proficiency requirements of the parent service.

10. How are you training soldiers so that problems of the 1st Battalion do not repeat themselves?

I am keenly aware of the circumstances surrounding the problems of the 1-184 Infantry Battalion. To minimize the potential that such problems might again arise, four actions have been implemented:

- First, I have directed the stabilization of units to increase the unit cohesiveness. I believe that the bond created between members of an extremely cohesive unit create norms and values that minimize such problems.

- Second, with the high number of combat veterans dispersed across the entire force, I have asked that each unit draw on the experience of their veterans to better prepare their members for what might be encountered and what is expected in similar situations.

- Third, the Commander of the First Army has directed that all deploying soldiers, not just Army National Guard members, receive a greatly expanded series of briefings and training on rules of engagement, use of force, cultural sensitivity, and other related topics to better prepare for the uncertainties of deployment and combat operations.

- Finally, well-trained and prepared leaders are essential to the success of our deployed units and service members. I am committed to the selection and development of solid leadership teams. To that end, I have directed that our internal training program for company leadership teams, conducted at San Luis

Obispo, integrate lessons learned from recent deployments in their program of instruction to ensure our emerging leaders are afforded the opportunity to learn from these deployments. These current and future leaders trained and mentored by peer and superior alike, will set the conditions for success.

11. Does the same sort of inexperience affect soldiers when confronted with a state disaster?

No. While stressful and often hazardous, the environment we encounter in responding to state emergencies lacks the inherent dangers of combat. The California National Guard has the highest level of experience of any military organization for responding to state emergencies because of the frequency with which we are called upon in our state. This level and frequency of response has created a core of Soldiers and Airmen experienced in emergency relief operations in every unit in the state.

Whistle Blowing

A May 2002 *Contra Costa Times* article discusses how the inspector general found equipment, training, and maintenance problems within the California National Guard while deployed in and around Bay Area bridges. According to the article, "Some soldiers, who say they were frustrated that bridge mission commanders did not respond to their requests for working vehicles and kits to keep their weapons clean, aired their complaints to the media." The article identifies you as the officer in charge of the bridge and airport security missions and quotes you as calling the soldiers who talked to the media "subversive, disloyal and seditious."

12. What is your response to the information presented in the article?

The former Adjutant General, Major General Paul D. Monroe Jr., assigned the bridge mission to me as an additional duty well after the mission had begun and the problems had been identified in the press. When I became Commander, I felt like the bridge mission was in disarray. My immediate concern was to correct the problems of lack of training, faulty vehicles, inadequate weapons qualification, and lack of cleaning kits. While I do not have a copy of the email referenced in the Contra Costa Times article, I recall that I was frustrated the Soldiers took the issues outside the chain of command without using internal mechanisms such as the Inspector General, Judge Advocate General, or Chaplain to address the issues. I believed that by bringing the concerns to the press the Soldiers, probably unknowingly, caused the mission to be politicized instead of using the mechanisms provided to attempt to resolve the problems.

I used the words "subversive, disloyal and seditious" in the internal confidential email to General Monroe. I can say with a high degree of confidence that I used the words to communicate my belief that the negative internal strife within the Office of the Adjutant General was having a detrimental impact on my mission. I remember using the term

"Soldiers" to refer to some senior leaders at the headquarters, who I believe politicized my mission.

13. What is your position on "whistle-blowing"? When, if ever, is it appropriate for soldiers to notify authorities, media, or other individuals outside of their chain of command of a potential problem?

I believe that whistle-blowers are important to an organization because they demonstrate the courage to let leadership know of possible problems within the organization. Leadership cannot fix problems unless they know about them. A bigger hindrance to the success of an organization is the individual who does nothing when he or she sees wrongdoing. I believe that one of my duties as the Adjutant General is to foster a spirit within the California Military Department that encourages individuals who see wrongdoing to bring those issues to the forefront, and when they do, have the confidence in the organization that the organization will protect them from retaliation from those who do not understand the purpose behind whistle-blowing laws.

On the federal side of the California Military Department, I have always believed that federal statutes and military regulations shield Soldiers, as well as Airmen, from retaliation for reporting wrongdoing. The federal Inspector General's office has proven to be an important outlet outside of the chain of command to bring alleged wrongdoing to the forefront. Further, Soldiers and Airmen are trained to understand that they can also bring allegations to the attention of the Chaplain and Judge Advocate General. Many Soldiers and Airmen will also bring their allegations to legislators through a congressional inquiry.

On the state side, I realize that there is a need for an Inspector General to receive and investigate allegations concerning state active duty personnel and employees. I support the concept of a State Inspector General for the Department to ensure the right mechanisms exist for all personnel within the Department.

I firmly believe in a Soldier and Airmen's First Amendment right to speak to the media, and the first amendment rights of the media to print their story. I believe they should exercise their right to speak to the media only after they have brought the issue to their chain of command and if not satisfied, then the internal mechanisms such as the Inspector General, Judge Advocate General, Chaplain or other organizational entity outside of their chain of command. Failure to follow these procedures can result in a breakdown of good order and discipline.

May 2005 Mother's Day Anti-War Rally

The Information Synchronization Knowledge Management and Intelligence Fusion Unit within the California National Guard was accused of spying on a Mother's Day Anti-War Rally in June of 2005. The *San Jose Mercury News* quotes an e-mail from Colonel Jeff Daniel's (sic) in response to information of the

demonstration as saying, "Forwarding same to our Intell. Folks who will continue to monitor."

The inspector general conducted an investigation. Their memorandum, which outlines their findings, says the information Synchronization Knowledge Management and Intelligence Fusion Unit was maintaining "situational awareness," and cites the possibly of miscommunication leading to the public's subsequent concern.

14. With so much confusion surrounding the three terms, please define spying, monitoring, and situational awareness.

I am providing the definitions you requested but I believe they are not helpful in describing the allegations; rather the allegations of spying were first made by the press and in my opinion were used in an idiomatic way. While I am not certain how the press defined spying in their articles, the Department of Defense has a Uniform Code of Military Justice (UCMJ) definition of spying that states "In time of war, the act of clandestinely or under false pretenses collecting or attempting to collect information with the intent to convey it to a hostile party." (Article 106, UCMJ) A dictionary definition of spying is "engaging in espionage, to seek or observe something secretly and closely, or to make a careful investigation into something, such as other people's activities".

I will state emphatically that the California National Guard did not "spy", under any definition, on anyone as alleged last year. Multiple independent investigations to include the Department of the Army Inspector General and the Nevada National Guard were conducted as a result of these allegations. In both cases, the allegation was not substantiated.

The Military does not provide a common definition of monitoring within the regulations governing intelligence activities. A dictionary definition of monitoring is the "act of observing or keeping track of something systematically with a view to collecting information". In reviewing available information, I believe the California National Guard did not systematically keep track of any groups or political rallies last year with a view to collecting or retaining information on California citizens. The "monitoring" mentioned in the email traffic regarding the Mother's Day rally at the Capitol was to have California National Guard personnel on duty that weekend be aware that there may be press inquiries generated by the rally.

Military personnel commonly understand situational awareness as being aware of everything that is happening around oneself and the relative importance of everything observed — a constantly evolving picture of the state of the environment. Situational awareness can be described broadly as a person's state of knowledge or mental model of the situation around him or her. The California National Guard must maintain "situational awareness" to know what events are occurring in and around our facilities, with our personnel, as well as knowing about current events and incidents which may

have an impact on our organization. Maintaining situational awareness facilitates our ability to quickly respond to state emergencies.

15. Has, or does, the California National Guard, Air National Guard, or any entity within the State Military Forces maintain information or files on civilians who are not affiliated with the National Guard, Department of Defense, or State Military Forces?

The California National Guard only maintains information on civilians as required by law and regulation. The California Guard adheres to the policies found in Presidential Executive Order 12333 which prohibits the military from collecting information on U.S. citizens.

The California National Guard maintains personal information on civilians which may include information for the purpose of publishing Invitational Travel Orders for flying on military aircraft. This information is essential and dictated by military regulation in order to properly "manifest" civilians for such flights as flood and fire damage assessments as well as general VIP transport missions. The same applies to other state agencies such as Department of Water Resources.

Additionally, California Guard conducts what is called "Boss/Legislative Lift" operations. These operations are designed to familiarize employers and legislators with the unique skills and training performed by their Soldier or Airman. We keep the personal information contained on those employers in the form of the Invitational Travel Orders.

The California Guard also keeps information on civilian job applicants and civilian employees working for the Military Department. In addition, as soon as the administrative, medical, and financial out processing is completed for any current member leaving the Department, their records are transferred or disposed of in accordance with the directives and policies of the parent organization. Discharged and retired Soldiers' records are processed under the guidelines of the Department of the Army. Federal Technicians' records are processed and protected using the directives of the Office of Personnel Management. Likewise, State Civil Service employees' records are processed and protected in accordance with guidelines from State Personnel and the Department of Finance.

16. Why did you eliminate the Information Synchronization Knowledge Management and Intelligence Fusion Unit?

The Information Synchronization Knowledge Management and Intelligence Fusion Unit was a concept developed by my predecessor (Major General Thomas Eres), intended to link the California National Guard to other state and federal agencies, and improve the ability of the Department to share information with civilian law enforcement agencies to prevent a terrorist attack.

The action by my predecessor to rename the J2 (Intelligence) function to the more complex Information Synchronization Knowledge Management and Intelligence Fusion Center was confusing and not indicative of the functions conducted within the California National Guard.

In directing the reorganization of the state headquarters, I charged that all functions were to be aligned in accordance with federal and state guidance. I further directed that the use of non-standard titles would be eliminated to avoid confusion or misinterpretation. The result of the reorganization was the re-establishment of a J2 section (Intelligence).

In a peacetime Title 32 status, the J2 functions include assisting the command with situational awareness issues of weather and physical security, maintaining federal classified intelligence reports for the Adjutant General, intelligence oversight, prepare country briefs for overseas travel, maintain our secure communications network and assisting in the development of operational plans.

Border Deployment

On May 17, 2006, President Bush announced plans to send 6,000 National Guard troops to the United States/Mexico border. In accordance with that plan, Governor Schwarzenegger intends to commit 1,000 California National Guard troops until December 31, 2008.

17. What effect will sending troops to the border have for our state's disaster preparedness? What steps are you taking to lessen this potential impact?

There is no reason to believe the deployment of troops for the border mission will have any adverse impact on California's disaster preparedness capabilities for the following reasons:

- First, all members deploying to this mission are under Title 32, which means they are still under the control of the Governor of the State. They are eligible for recall to state missions immediately. Having traditional guard members serving in an active capacity but available to the governor for recall may result in reduced response time depending on the mission requirements and locations.

- Second, the involvement of the California National Guard with the Customs and Border Protection Agency and other law enforcement agencies improves our ability to coordinate with civilian agencies and strengthens our communications protocols that we would use in the event of a natural or man-made disaster.

- Third, every Soldier and Airman that deploys on this mission is afforded the opportunity to experience first hand the support role played by the National Guard in providing Military Support to Civil Authorities.

- Finally, this mission is truly a joint operation. The California Army National Guard and the California Air National Guard are working hand in hand with each other and with members from other states. They are all learning to leverage the inherent capabilities of the other forces, collaborate across service and state lines, and ultimately use the combined capabilities of the entire force to influence a desired outcome.

18. If CNG troops are coming home from Iraq, only to be sent to the border, do you anticipate this impacting morale and possibly recruitment?

The California National Guard is supporting the Southwest Border Mission under the direction of the Governor. To that end, I am following the Governor's guidance that only volunteer Soldiers and Airmen are assigned to the mission. Returning California National Guard veterans will not be involuntarily sent to the border and thus will not impact their morale. Returning veterans that are interested in volunteering for the mission will be able to do so. If the California National Guard is unable to meet mission requirements with volunteers, we will look to other states for support. Any shortfalls caused by lack of available volunteers would be resourced either by units in annual training rotations or passed back to the National Guard Bureau for resourcing from another state.

With regard to a decrease in recruiting, I believe it is too early to determine whether or not it will impact my overall recruiting mission. However, since this mission is for volunteers only, I do not anticipate a reduction in my recruiting goals. As stated above, I have directed significant changes in the California National Guard recruiting and retention programs and I remain optimistic that my goals will be met.

Senate Confirmation

Responses to Senate Rules Committee Questions

Sandra L. Bryson, Commissioner (Adult)

Board of Parole Hearings

July 14, 2006

Statement of Goals

1. ***What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure?***

GOALS AND OBJECTIVES:

- To conduct parole hearings that preserve public safety and prisoner due process;
- To evolve Board of Parole Hearings into a more efficient body with clear, transparent policies and procedures that works effectively with both public agencies and private organizations;
- To achieve the court-ordered case backlog reduction plus shape a plan for handling cases projected over the next ten years;
- To achieve an optimum caseload and assist the Board to develop less time-consuming methods to prepare and conduct hearings;
- To implement the California Inmate Case Review program or similar program designed to aid Commissioners and to capture hearings data.

Training

2. ***Please describe the training and any other assistance you received in preparation for your assignment as a commissioner, including knowledge of the requirements of the Penal Code and case law as they apply to the parole process. Please also detail any additional training or refresher courses you have participated in.***

In October/November 2005, I received parts of the following training (not in this order):

[Note: During that period, staff reductions due to the reorganization of California Department of Corrections and Rehabilitation (CDCR) and several high profile cases caused many classes to be curtailed or cancelled. The general level of instruction was very high. In fact several classes were interrupted to redirect the instructor, an expert in the field, to handle an urgent agency situation.]

- State Driver Training
- Travel Expense Claims
- Ethics
- Equal Employment Opportunity
- Sexual Harassment

- Prison Safety and Security
- Parole Consideration Hearing Procedures
- En Banc Hearings
- Executive Board Meetings
- Interstate Corrections Compacts
- International Prisoner Transfer Program
- Legal: CA Code of Regulations: Title 15—Divisions 2, 3; CA Penal Code; Government Code; Court Decisions and Case Law
- CDCR and Inmate Central Files (C-Files)
- BPH Investigations
- Confidential Information
- Intimate Partner Battering (aka Battered Women's Syndrome)
- Psychological Evaluations
- Media
- Governor Pardon Policy and Executive Clemency
- Victim and Survivor Services
- Prison Gangs

3. ***Do you believe the training is sufficient? Is there additional training that would be useful?***

The BPH training program is currently being redesigned at headquarters in Sacramento.

I would like updated training, especially legal updates (recent court decisions), additional training in some of the above subjects, and training in conducting Documentation, Rescission, and Revocation Hearings. My previous training and experience in law enforcement, corrections, and emergency response systems has been extremely valuable in the Commissioner position.

4. ***Does anyone review your cases, particularly in your early months on the job, to help you determine best procedure? Does anyone observe your hearings to assist you?***

Commissioners assisted me when I sat in on several hearings in 2005 as part of the training. Deputy Commissioners have been very helpful in using the C-files.

5. ***Who is available on your staff to assist you with questions regarding the law or proper policy and procedure?***

BPH Legal Department assists by telephone.

6. ***How do you communicate with your headquarters? If you are experiencing problems, who do you inform? If you have suggestions for improving the hearing process, who do you inform?***

I communicate with Sacramento headquarters real time by phone, primarily to the Executive Officer. The Commissioners are scheduled to receive Blackberries soon. Off line we communicate via email as well as fax, postal service, and private carrier.

The type of problem and time of day determines the contact—legal, investigative, victims services, training, IT, state vehicle, administrative, Board Chairman, etc. Hearing process suggestions would typically be vetted through legal then passed to the Board Chairman. In my experience, CDCR personnel at the institutions are knowledgeable, responsible, and ready to facilitate all operations.

Self Help and Vocational Education Programs for Inmates

Self help and education are typically recommended when an inmate is denied parole. The extent to which an inmate has participated in self help programs is regularly a subject of discussion in the inmate's parole suitability hearing. However, self help, education and vocational training availability varies widely.

7. ***To what extent are you informed of the availability of self help groups and vocational programs at the institution where the parole applicant is incarcerated?***

BPH and some institutions have provided some handouts listing available programs. These are valuable to give Commissioners general awareness of program types. However, programs change frequently among and within the institutions for many reasons ranging from population and facility configuration to instruction and funding.

In evaluating inmate post conviction factors, the Commissioner must consider programming during incarceration, sometimes dating back twenty years. In making recommendations, Commissioners must project future programming, sometimes dating forward five years.

8. ***If a prisoner requires additional self-help work but such a program is unavailable, what alternatives do you recommend, if any?***

Recognizing that the type of institution plus the inmate's status within that institution (classification score and custody level) affect the availability and access to programs, libraries and other resources, I may recommend:

- Self-study (read books/articles and write reports about what you learned to bring to your next hearing);
- Outreach (write to outside educational institutions/organizations to obtain study materials and bring reports about what you learned to your next hearing);
- Faith-based or cultural programs (describe the programs and what you learned to the Board);
- Seek advice and help from correctional counselors, officers, and qualified family and friends in society (especially for transition self help);
- With CDCR approval, help initiate a new group within the institution (several AA/NA [Alcoholics Anonymous/Narcotics Anonymous] courses have started this way, giving inmates pride in participating);
- Volunteer to assist tutoring/teaching programs (teaching is often the best way to learn.)

Hearing Preparation

Some members of your board have a difficult travel schedule and all of you visit different institutions on a weekly basis. Inmate files are not available electronically.

9. ***Please describe when and how you prepare for a hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for the following week's hearings?***

Each weekend I review cases for the following week/two weeks, depending upon scheduling and number of cases. Typically, two to three large file boxes of cases arrive at my home headquarters 10 days in advance while I am away conducting hearings at a prison.

Average case preparation time is one hour—averaging sixteen hours per weekend. Cases requiring extended analysis/investigation and complex legal cases require more time.

To facilitate the review and hearing procedures, I designed the simple database program referenced earlier in my response to #1 – Goals and Objectives.

10. ***What circumstance might prompt you to look beyond the information contained in the board members' hearing packets/prisoner's C-file to consult with others who may have special insight or knowledge of the case?***

Referencing the C-file is essential to obtain certain types of data, which must be done prior to the hearing at the institution. Some errors or conflicts in the board packets can only be resolved at the institution, either by C-file reference or in conjunction with institution records staff. Sometimes questions arise, either before or during hearings, requiring telephone consultation with legal or investigations.

The inmate's testimony may prompt scrutiny of the C-file beyond the typical level of reference. For example, one prisoner appeared to have many factors favoring parole suitability; however, a 115 (serious prison offense) that he had described as self-defense proved to be a planned riot involving the prisoner in a 2-on-1 attack of another inmate.

As a practical matter, Commissioners do not have the six to eight hours per prisoner required to conduct an in-depth C-file review.

Various circumstances could warrant further investigation or consultation by specialists:

- Possible Intimate Partner Battering but no investigation report
- Information in Confidential File
- Gang activity
- Drug or weapons trafficking
- INS hold with other immigration issues
- Language issues requiring presence of court-certified interpreter
- Signs of severe mental illness or dysfunction

11. Would you advocate for preparing for cases or assembling board packets in a different manner than that currently provided?

Based on my training and experience, the best practice would be to conduct case review at the institution the day of the hearing—C-file available, Commissioner and Deputy Commissioner working together during regular business hours when agencies and staff are available, preserving file security and saving shipping costs.

Board packet data should be prepared as digital files using standard searchable database software, enabling conducting case review and hearings via laptop computers.

This method of operation would require hearing three cases per day (reviewing each case prior to the hearing or reviewing cases in the morning and holding afternoon hearings), as hearings usually last three to four hours each (not the two-hour allocations shown on schedules). Commissioners typically arrive at the institution hearing room by 0730, take no lunch or breaks during the day, working until the hearings are completed at 1800 – 1900 or later.

Inmate Representation

Unless they are paid privately, attorneys who represent indigent inmates are paid $30 an hour by the state, which is capped at six-eight hours, including travel time.

12. ***In your experience, does this time frame allow attorneys to sufficiently prepare? What role does attorney preparation play in the number of postponed hearings?***

Most inmate attorneys with whom I have worked appear adequately prepared. For those traveling long distances, the pay rate is low. The attorneys will request postponements (as opposed to stipulations) if the State is responsible for the issue at hand. Attorney preparation—document review or inmate interview—may disclose these issues. Or the Commissioner may identify an issue requiring a postponement.

13. ***Attorneys have complained that it is not uncommon that important information, such as recently issued appellate court opinions that affect their client's case, is not included in the materials provided to members, inmate attorneys, inmates and other interested individuals. Do you find that this is a problem? If so, what should be done?***

The scope and complexity of the largely paper-based CDCR records system is a huge problem with no elegant solution. Everyone who interfaces with this system struggles with errors and omissions—inmates, CDCR staff, C/Os, attorneys, Commissioners, and other interested parties alike. Problems vary from trivial to tragic. There is no simple solution. But all solutions will require computer database systems.

14. ***Attorneys also complain that it is difficult, if not impossible, to get factual matters corrected in the inmate's file. If an attorney attempts to correct the record as documented in the central file, how should it be done to assure it happens? Whose job is it to follow through on this type of correction?***

CDCR is the agency responsible for the prisoner and his C-file.

Parole Hearing Backlog

The board is under court order in a class action suit to provide timely parole hearings. In her ruling, a Superior Court judge noted that instead of the backlog being eliminated in less than two years as the board predicted in 2001, it had actually increased at an "alarming rate" of 55 per cent. The causes of the problem are many and sometimes beyond the board's control, but the backlog is costly to the taxpayer who must not only pay for inmate incarceration but also for litigation resulting from the backlog.

15. As a key participant in the parole process, do you have any suggestions regarding ways to eliminate the backlog?

The tortoise v. hare fable—steady sustainable progress gets you to the goal faster than operating chaotically—is analogous to the way "eliminating the backlog" has been approached as evidenced by the number of Commissioners who have quit since my October appointment. The *cause* of the backlog is outside the control of any existing Board member. The *solution* lies in a sustainable, cost effective systems approach:

- The Commissioner position should be sufficiently attractive in salary and reasonable time off to commit trained professionals to one or two terms of hard, dedicated service.
- Enough Commissioners must be hired; some immediately on a short-term basis, perhaps retired annuitants, to meet the demand.

16. Likewise, what recommendations would you make, if any, to improve the accuracy of often confusing data issued by the board? (Specifically at issue is how the backlog is defined, the precise number of individuals in the backlog, number of hearings scheduled and held, number of grants and denials issued, postponements ordered, and stipulations.)

Complex, time-variant systems such as parole hearings require a systems approach. BPH, per court order, has built a database and is now employing high-end software to calculate the backlog based on specified parameters. The number of cases backlogged will vary daily based on the number of hearings conducted system-wide. The BPH goal is to reduce that number to near-zero. BPH administrators advise that we are achieving that goal, with interruptions caused by necessary postponements (postponements are not made capriciously by this Board after Commissioners labor to prepare each case for hearing) and by Commissioners leaving the Board. My understanding is that grants, denials, and stipulations do not increase the backlog.

<u>Audio Recordings of Parole Hearings</u>

Almost without exception, the audio recordings of lifer hearings produce a flawed written transcript from which valuable testimony is omitted.

17. Do you experience problems in the proper functioning of audio or videoconferencing equipment at the hearings?

Yes, but these problems are being addressed by the new equipment ordered by BPH.

18. Ideally, who should be responsible at the hearing itself for addressing problems resulting from malfunctions of audio equipment or videoconferencing equipment used in the hearings?

CDCR personnel, who should be provided the proper training, time and resources.

19. In your view, what process would be the most helpful to you in avoiding hearing delays and postponements? Ideally, whose job should it be to operate this equipment and maintain it?

Hearing delays and postponements caused by equipment failure must, from a logistical perspective, be the responsibility of CDCR personnel who should be provided the proper training, operations time and resources.

The best process, unrelated to equipment failure, to reduce hearing delays and postponements involves triage techniques to maximize Board efficiency without abrogating prisoner's rights.

20. Do you favor videotaping hearings for subsequent staff review or use in en banc hearings held by the full board?

Yes, if the process is planned for effective operation and does not increase staff review time or the time required for en banc hearings.

21. Who addresses equipment issues? Is it the board or Department of Corrections and Rehabilitation? Is anyone monitoring the problems and seeking to have them corrected?

High quality digital recording systems have been purchased by BPH for use throughout CDCR institutions that should meet the need and that should be operable by CDCR personnel.

Parole Suitability Decisions

Service as a board member requires balancing competing interests. There is the expectation that you will protect public safety in the dispensing of parole dates. The law requires that a year before an inmate's minimum eligible parole date, a release date shall "normally" be set, except under certain exceptional circumstances. The board has been criticized for ignoring the "normally set" provision for years. In 2005, the board reported that 3,313 suitability hearings were held, resulting in the release of 57 individuals, including seven ordered freed by the courts.

22. ***From your experience, please explain briefly how you balance the competing demands.***

My responsibility as a Commissioner is to balance the multi-dimensional information and determine prisoners' suitability for parole.

We are not balancing "competing demands." A premise of civilized society is that inmate due process enhances public safety. A prisoner who is ready for parole will benefit, not threaten, society.

As to the 2005 hearings data, a significant number of Board grants were reversed. The bar to release is set very high for prisoners who committed grave offenses. This speaks to the need for quality programming, particularly for youth offenders, and enhanced operations as well as the facilities to reduce prison gangs, drugs, and crime.

23. ***What is the criteria for issuing one-year or multi-year denials? Some inmate attorneys complain that their clients are given denials of two or more years without an adequate or proper justification. They say multi-year denials are made even though the inmate has remained trouble free and programmed excellently since the last hearing when he/she received only a one-year denial. They also say that multi year denials are ordered so the case backlog will appear to be shrinking.***

I have never given a multi-year denial, or indeed made any decision, in order to reduce the backlog. I make each decision on a case-by-case basis, weighing all available, pertinent information.

My decision is informed, but not determined, by prior decisions. I take this responsibility seriously; we hold this prisoner's life in our hands. One of the questions I ask in deliberations: Could this prisoner reasonably do what he or she has to do in order to be eligible for parole within the timeframe I am considering?

By law the bar for paroling Life prisoners is set very high, as it should be. But denials are stressful for Commissioners. The decision to deny parole has never, in my experience, been taken lightly. The day I can grant a prisoner parole is a good day.

24. ***What should the Legislature expect from board members regarding a consistent format for lifer hearings? What should the appropriate emphasis be on the facts of the crime? Are you able to familiarize yourself with the reasons why previous panels denied suitability?***

The Board has a reasonably consistent format for conducting Lifer hearings as shown by our procedures. As stated in question #1, an important task for the Board is to complete a document, based in law, which articulates our policies and procedures. I welcome Senators and Legislators to attend my hearings.

The facts of the crime constitute one dimension of the prisoner's life. Other dimensions include his/her prior criminal and social history, behavior and programming while incarcerated, psychological/psychiatric evaluations, parole plans, and the hearing testimony. The "appropriate emphasis" is the Commissioner's responsibility and *discretion*, based on professional and life experience and knowledge. This responsibility is, indeed, the nexus of the job and requires mature reasoning capability.

I familiarize myself with previous panels' decisions by reading the transcripts.

25. What is your view of how an inmate's psychological evaluation should be used in a lifer hearing?

The psychological evaluations represent important inmate assessment *tools* in the array of tools the panels use. As with any discipline, some evaluations are more applicable—*better*—than others. BPH is developing a unit of trained psychologists dedicated to lifer hearings.

Hearing Postponements

Costly postponements of lifer hearings result from logistical problems at the prison or CDCR's failure to appropriately prepare the information packet available to board members.

26. How might problems and unnecessary postponements be reduced? How might adult custody personnel and the board better coordinate activities? Who do you believe is ultimately responsible?

Problems and unnecessary postponements can be reduced through employee training, reduced employee turnover, and employees "taking ownership" of their responsibilities.

Adult custody personnel and the Board can better coordinate by improving and enhancing communications and cooperating in training. Recent communications show that this is already happening.

No single identifiable entity is responsible for system failures. Each person must take responsibility for his/her actions.

Senate Confirmation
Responses to Senate Rules Committee Questions
Jack E. Garner, Commissioner (Adult)
Board of Parole Hearings
July 14, 2006

Statement of Goals

1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure?*

My first priority is to contribute towards the reduction in the backlog of parole hearings. Until this issue is satisfactorily addressed, all other matters will have to be handled on a case- by- case basis.

Once the backlog is under control, the Board of Parole Hearings (BPH) needs to evaluate existing policies and procedures. I have served on many boards and find that the BPH appears to be considered as employees, but not policy makers.

Training

2. *Please describe the training and any other assistance you received in preparation for your assignment as a commissioner, including knowledge of the requirements of the Penal Code and case law as they apply to the parole process. Please also detail any additional training or refresher courses you have participated in.*

Since being appointed to the BPH I have received training in the following subjects:

State Mandated Training (part of new Commissioner orientation):

a. Driver Training
b. Ethics
c. Equal Employment Opportunity
d. Sexual Harassment

Additional Training for BPH:

a. Travel Expense Claims/ Payroll
b. How to conduct hearings
c. Prison Gangs
d. California Code of Regulations, Title 15
e. Mental Health
f. Executive Clemency
g. Media Relations
h. Safety and Security
i. Case Law
j. Victims next of kin issues

k. Foreign prisoners
l. Intimate Partner Battering

Additionally, I was afforded the opportunity to "shadow" other commissioners conducting hearings. This was extremely valuable in that it allowed me to observe actual hearings and to put the training theories into reality

3. *Do you believe the training is sufficient? Is there additional training that would be useful?*

I was satisfied with the training I was provided. Considering I have had 15 years of training experience with the Commission on Peace Officer Standards and Training and 25 years of local government experience, my training needs may not have reflected that of other appointees'. The level of training needs to reflect the individual needs of each commissioner. I think it is important that a process such as a Training Needs Assessment be developed. This would serve to identify appropriate training topics. Also, this would facilitate the creation of a check list of mandatory and desirable topics. This would allow each commissioner to receive the level of training needed for each topic.

A method needs to be developed to provide commissioners and deputy commissioners with on-going training relative to emerging case law concerning issues impacting the conducting of hearings; such as training bulletins, DVD's, etc.

4. *Does anyone review your cases, particularly in your early months on the job, to help you determine best procedure? Does anyone observe your hearings to assist you?*

I have requested BPH legal staff advise me of any recommendations regarding my case decisions. To date, I have not received any feedback suggesting an alternative approach in my handling of cases. I have had Armstrong Committee members monitor my hearings and I did not receive any comments. Also, on occasion, I have had Department of Corrections and Rehabilitation (CDCR) staff members observe hearings.

5. *Who is available on your staff to assist you with questions regarding the law or proper policy and procedure?*

When confronted with a legal issue during a hearing, I have found Andrew Woodrow and Deborah Bain to be valuable assets. Both have been readily available and provided appropriate guidance relative to the issue.

6. *How do you communicate with your headquarters? If you are experiencing problems, who do you inform? If you have suggestions for improving the hearing process, who do you inform?*

I communicate with Headquarters via telephone calls, voice mail, and e-mail. All methods have proven to be effective. I have found Headquarters staff to be very responsive and sensitive to the needs of commissioners.

If I am experiencing any problems of an administrative nature I contact John Monday, the Executive Officer, or his designee. If confronted with legal problems I handle them in the manner described in Question 5.

In the event I identify any suggestions for improvements pertaining to the hearing process, I would consult the Chairperson. There are very few opportunities for Commissioners to share their thoughts with other Commissioners relative to the hearing process.

Self Help and Vocational Education Programs for Inmates

Self help and education are typically recommended when an inmate is denied parole. The extent to which an inmate has participated in self help programs is regularly a subject of discussion in the inmate's parole suitability hearing. However, self help, education and vocational training availability varies widely.

7. *To what extent are you informed of the availability of self help groups and vocational programs at the institution where the parole applicant is incarcerated?*

Many institutions provide a list of self-help and vocational programs available to the inmates. In the absence of any list I have found the correctional officers to be a tremendous resource regarding programs in the institution. In fact, I think the correctional officers appreciate being asked about the programs.

Many inmates are negatively impacted in program participation due to their classification score or their yard of assignment. Also, inmates have shared their belief that institutional tensions resulting in lock-downs impact programming opportunities.

8. *If a prisoner requires additional self-help work but such a program is unavailable, what alternatives do you recommend, if any?*

In the absence of institutional programs, I recommend self-study, such as book reports, etc. I encourage the inmate to keep detailed notes as to what they read and what they learned from the material. Also, I suggest inmates develop study groups in the absence of institutional programs.

Hearing Preparation

Some members of your board have a difficult travel schedule and all of you visit different institutions on a weekly basis. Inmate files are not available electronically.

9. *Please describe when and how you prepare for a hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for the following week's hearings?*

I prefer to review all of my assigned cases before the week of the hearings. The review occurs during the weekend before the hearings. I have found the weekly schedule is very fluid and by preparing in advance I am able to be flexible. The case files are usually delivered by courier one to two weeks prior to the scheduled hearings.

Case preparation time requires approximately 30-45 minutes per file. An entire week usually consists of 16 cases, with each case file varying in volume depending on the number of previous hearings. Also, often times the material in the case file is limited and a review of the inmate's Central file at the institution is required to clarify any issues.

I live in the Sacramento area and my travel time to the assigned institutions can vary from one to five hours of driving. It is my preference to arrive at the institution at least one hour prior to the first scheduled hearing. Arriving early allows me to ensure the hearing room and equipment are in working order.

10. *What circumstance might prompt you to look beyond the information contained in the board members' hearing packets/prisoner's C-file to consult with others who may have special insight or knowledge of the case?*

In addition to the Board packet and the C-file, I rely on the abilities of the BPH Investigative Unit to conduct specialized investigations. Recently, I requested this service when a crime summary was in dispute and additional reports were required. Also, I have found representatives from the District Attorney's office can assist in obtaining additional reports.

11. *Would you advocate for preparing for cases or assembling board packets in a different manner than that currently provided?*

The present method of preparing the board packets meets my needs.

Inmate Representation

Unless they are paid privately, attorneys who represent indigent inmates are paid $30 an hour by the state, which is capped at six-eight hours, including travel time.

12. *In your experience, does this time frame allow attorneys to sufficiently prepare? What role does attorney preparation play in the number of postponed hearings?*

The attorneys I have worked with at the hearings always appear ready to conduct business. Their level of participation reflects that they are familiar with the inmate and the pertinent information in the file. I have not experienced a lack of preparation by the attorneys to be a factor in postponements of hearings. Generally, postponements have occurred when Board ordered reports are not available, or anticipated Letters of Support for the inmates have not been received. Additionally, unique institutional circumstances frequently occur, i.e. quarantines due to medical issues.

13. *Attorneys have complained that it is not uncommon that important information, such as recently issued appellate court opinions that affect their client's case, is not included in the materials provided to members, inmate attorneys, inmates and other interested individuals. Do you find that this is a problem? If so, what should be done?*

There have been instances when the inmate's attorney has provided the Commissioners with a copy of an appellate decision involving parole issues. BPH legal staff needs to develop a method in which to provide Commissioners with legal decisions that may have a bearing on parole hearings.

14. *Attorneys also complain that it is difficult, if not impossible, to get factual matters corrected in the inmate's file. If an attorney attempts to correct the record as documented in the central file, how should it be done to assure it happens? Whose job is it to follow through on this type of correction?*

The accuracy of information contained in the inmate's file is a matter of concern to all involved parties. The responsibility for the integrity of the C-file is with the institution. In fact, commissioners cannot add or remove any document from the C-file. If I find inaccurate information contained within the file, I notify institutional staff of the correction needed.

Again, the ultimate responsibility for the follow through is at the institutional level. However, inmates are encouraged to work with their counselors to ensure corrections are made.

Parole Hearing Backlog

The board is under court order in a class action suit to provide timely parole hearings. In her ruling, a Superior Court judge noted that instead of the backlog being eliminated in less than two years as the board predicted in 2001, it had actually increased at an "alarming rate" of 55 per cent. The causes of the problem are many and sometimes beyond the board's control, but the backlog is costly to the taxpayer who must not only pay for inmate incarceration but also for litigation resulting from the backlog.

15. As a key participant in the parole process, do you have any suggestions regarding ways to eliminate the backlog?

A key element in eliminating the backlog is to have a fully staffed commission to conduct the maximum number of hearings per week. Clearly, many inmates present themselves at the hearing with a record that is not supportive of parole. However, even with this record they are legally entitled to a hearing.

16. Likewise, what recommendations would you make, if any, to improve the accuracy of often confusing data issued by the board? (Specifically at issue is how the backlog is defined, the precise number of individuals in the backlog, number of hearings scheduled and held, number of grants and denials issued, postponements ordered, and stipulations.)

A criteria needs to be identified by all stakeholders. Once a commonly accepted criteria is in place, strategies can be developed to address the accuracy and the consistency of data issued by the Board.

My responsibility is to conduct parole hearings as required by law on a case by case basis.

Audio Recordings of Parole Hearings

Almost without exception, the audio recordings of lifer hearings produce a flawed written transcript from which valuable testimony is omitted.

17. Do you experience problems in the proper functioning of audio or videoconferencing equipment at the hearings?

The age and quality of the recording equipment at the hearings is an on-going issue. This is a technical problem that requires a technical solution. Commissioners should be provided with state-of-the-art equipment. Faulty equipment has resulted in costly delays; for example, conducting a hearing only to find that the tape could not be

transcribed due to poor quality. This results in the need to schedule another hearing on the same matter.

18. *Ideally, who should be responsible at the hearing itself for addressing problems resulting from malfunctions of audio equipment or videoconferencing equipment used in the hearings?*

Each institution should be responsible for the maintenance and operation of the recording equipment used at the hearings. Commissioners/ Deputy Commissioners should not be required to address such matters.

19. *In your view, what process would be the most helpful to you in avoiding hearing delays and postponements? Ideally, whose job should it be to operate this equipment and maintain it?*

Postponements associated with equipment problems could be reduced if the equipment was more frequently tested to identify problems. Once the problem is identified, corrective action could be taken before the hearing. Ideally, back-up equipment should be available at each institution. Again, the responsibility for the equipment and its maintenance lies with the institution.

20. *Do you favor videotaping hearings for subsequent staff review or use in en banc hearings held by the full board?*

This is a concept worth exploring; however, until the current problems with the recording equipment are resolved, additional technology should not be added.

If the video concept is pursued it would be appropriate to identify an institution for pilot testing. Included should be a cost benefit analysis of the program, and a legal means to maintain another source of record.

21. *Who addresses equipment issues? Is it the board or Department of Corrections and Rehabilitation? Is anyone monitoring the problems and seeking to have them corrected?*

This is a technical issue that requires a technical solution. This is not an issue Commissioners should have to address.

Parole Suitability Decisions

Service as a board member requires balancing competing interests. There is the expectation that you will protect public safety in the dispensing of parole dates. The law requires that a year before an inmate's minimum eligible parole date, a

release date shall "normally" be set, except under certain exceptional circumstances. The board has been criticized for ignoring the "normally set" provision for years. In 2005, the board reported that 3,313 suitability hearings were held, resulting in the release of 57 individuals, including seven ordered freed by the courts.

22. *From your experience, please explain briefly how you balance the competing demands.*

This question directly involves the factors of suitability and unsuitability in the parole decision. My decision is based on all materials presented to the Board and is reflective of my concerns for inmate due process and public safety. This includes a review of the commitment offense, institutional behavior, psychological factors, and parole plans.

23. *What is the criteria for issuing one-year or multi-year denials? Some inmate attorneys complain that their clients are given denials of two or more years without an adequate or proper justification. They say multi-year denials are made even though the inmate has remained trouble free and programmed excellently since the last hearing when he/she received only a one-year denial. They also say that multi year denials are ordered so the case backlog will appear to be shrinking.*

I consider each case on its own merit, recommendations made by previous panels (the inmate's performance on recommendations), psychological factors, programming and disciplinary record. I do not give multi-year denials to favorably influence the backlog. Additionally, I do not assign a greater period of denial than the previous panel unless there is a compelling reason such as, a lack of programming, inadequate parole plans, psychological issues or recent discipline.

24. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? What should the appropriate emphasis be on the facts of the crime? Are you able to familiarize yourself with the reasons why previous panels denied suitability?*

The format for lifer hearings is consistent based on the script provided during BPH training.

The facts of the crime are always a factor in parole decisions. The appropriate emphasis is different from case to case. As always noted, the facts of the crime will never change.

I always review the decision by the previous panel and evaluate the inmate's performance on the panels' recommendations.

25. *What is your view of how an inmate's psychological evaluation should be used in a lifer hearing?*

The psychological examination is an important consideration in the lifer hearing. The report prepared by the psychologist often provides a risk assessment opinion comparing the inmate to the average citizen in the community. A validated risk assessment tool is generally not employed. That being said, many psychological reports have limited value because key information in the file is missed or ignored in the risk assessment.

Hearing Postponements

Costly postponements of lifer hearings result from logistical problems at the prison or CDCR's failure to appropriately prepare the information packet available to board members.

26. *How might problems and unnecessary postponements be reduced? How might adult custody personnel and the board better coordinate activities? Who do you believe is ultimately responsible?*

There are many reasons for hearing postponements and most are unexpected. To this date I have had to postpone hearings for the following reasons:

- Inmate quarantine (chicken pox, tuberculosis)
- Melee in exercise yard (inmate down)
- Inmates fire attorney minutes before hearing
- Inmate representing self, inmate did not receive board packet
- Non-English speaking inmate, not provided interpreter for C-file and psychological exam review.
- Inmate in mental health program not provided an attorney
- Inmate with low grade point level representing self
- Inmate's attorney is ill

The coordination between correctional officers and Commissioners is excellent. The officers are very flexible and assist with inmate movement during scheduling modifications. Also, the officers coordinate with interpreters, private inmate attorneys and district attorneys regarding scheduling issues.

With the respect to the problems of postponements, it is difficult to assign responsibility. There are many circumstances that are beyond the control of CDCR staff and the Commissioners. With respect to coordination activities, as previously indicated I have not experienced any difficulties or a lack of cooperation.

CALIFORNIA LEGISLATURE

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 21, 2006

Stan L. Dixon
Post Office Box 235
Ferndale, CA 95536

Dear Mr. Dixon:

As you know, your appointment as a member of the Board of Forestry and Fire Protection is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please return this information to our office by July 10, 2006.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Board of Forestry and Fire Protection?*

2. *What do you believe to be the most pressing issue or issues that the Board of Forestry and Fire Protection should address in the coming year?*

The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies – the Department of Fish and Game and the regional water quality control boards – have statutory mandates that on occasion are more protective of resources and restrictive of logging activities. Historically, this has created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by the Department of Fish and Game or regional water quality control boards.

3. *Please explain your views on how the Department of Forestry and Fire Protection and the Board of Forestry and Fire Protection should act to resolve or address this conflict. To what extent should the board and department act to meet the needs of the other trustee agencies?*

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The Board of Forestry and Fire Protection is the lead agency for the preparation of the new environmental impact report for Jackson Demonstration State Forest. There has been significant controversy surrounding management at the forest, and a desire by some to shift the management of Jackson Demonstration State Forest toward creating more high-quality habitat and recreational opportunities. In the current environmental impact report discussions, Alternative C represents the Department of Forestry and Fire Protection's historical management approach of the forest. Alternative D represents provisions of the Wilson administration's Citizen's Advisory Committee, and Alternative F generally corresponds with the provisions that were found in SB 1648 (Chesbro) from 2004.

4. *Please describe your vision for the Jackson Demonstration State Forest, and indicate what course of action you would support for the environmental impact report. What factors will you weigh in determining which option to support when this environmental impact report comes before the board for approval?*

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments, and (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

5. *Does the board need new authority to deal with this issue? How should the issue of cumulative impacts be addressed by the board?*

6. *Do you believe the rate of harvest should be addressed by the board? If so, how?*

In addition to timber harvest regulations, special regulations apply to watersheds that have threatened wildlife species, streams, or rivers with degraded water quality. These particular threatened and impaired regulations will expire on December 31, 2006.

These regulations must be extended or amended by this October, unless the board wishes them to expire. The threatened and impaired rules were previously adopted by the board in recognition that the Forest Practice Rules were not adequately protective of salmon and steelhead resources and impaired watersheds.

7. *Do you believe that the Forest Practice Rules, including the present threatened and impaired regulations, are sufficiently protective of salmon and steelhead resources and impaired watersheds?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

Don Perata

DON PERATA

DP:KW:dc

cc: State Board of Forestry and Fire Protection

STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor

Senate Rules Committee

BOARD OF FORESTRY AND FIRE PROTECTION
P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
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JUL 10 2006

Appointments

The Honorable Don Perata
Senate Rules Committee Chair
State Capitol, Room 420
Sacramento, CA 95814-4900

Delivered via facsimile to:
(916)445-0596
attn: Nettie Sabelhaus

Re: Confirmation

Dear Chairman Perata:

Thank you for the opportunity to respond to questions the Rules Committee regarding my views and opinions on issues relative to the confirmation of members of the Board of Forestry and Fire Protection. My answers will be as brief as they can be regarding very complex issues, and will truly reflect my opinions on the issues in which the Committee has indicated an interest.

In response to your first question, my primary goal is to see the Board of Forestry and Fire Protection reestablish its independence as indicated in the statutes which brought it into being and to make it again recognized as the principal policy body for the state's forest resources and wildland fire protection.

The most pressing issues which the Board will be facing this year are the extension of the Threatened and Impaired Watershed Rules; the continuation of development of a process of review of scientific data to determine the effectiveness of those rules; the resolution of the Environmental Impact Report/Management Plan for Jackson Demonstration State Forest; and a review and update of the California Fire Plan.

In response to question three, there is a Memorandum of Understanding between the Regional Water Boards and CDF on how to handle dispute resolution. The MOU incorporates a process which allows disputes on issues to work themselves to the highest level of management in both departments for resolution. The Board of Forestry should monitor more closely how this process is working. Unfortunately, I believe that all departments involved in the review of timber harvest plans need to come together in a less confrontational process to review issues. Education of all reviewers involved in the process relative to the laws and regulations of other reviewers would be beneficial in making the review process more effective.

The Board of Forestry has instructed its staff to engage in collaborative efforts with departmental staffs to achieve better results.

Relative to question four regarding Jackson Demonstration State Forest it would be premature for any Board member to suggest where their support will be when the Board votes on this issue because our contractor (CDF) has not completed and forwarded to the Board its review of the thousands of public comments. However, it is clear from public comment that I personally heard at

Public Hearings in both Ukiah and Sacramento and written comments received from both the Ft Bragg City Council and the Mendocino County Board of Supervisors that Alternative D has great support.

In the final analysis, the Board has the option of crafting its own alternative and I favor that approach. I believe that our alternative should include much of Alternative D and some provisions of Alternative F. After seeing the contractor's review of all the public comments, provisions of other Alternatives may also be included in the Board's final choice.

In regard to question five I don't believe the Board needs new authority to deal with the issue of cumulative impacts at this time. As you are aware, most of the problems associated with cumulative impacts are related to roads. The Board's Long Term Management Committee is currently developing a Road Management Plan Regulation which should be before the full Board soon for public notice of the proposed rule package. Those regulations, if approved by the Board, would become effective January 1, 2007.

The other area that the Board is currently involved with is the establishment of a scientific review process to analyze the effectiveness of the Threatened and Impaired Watershed Rules by reviewing scientific data developed since their inception. This process is well underway and may provide the Board with very helpful data on how to deal with the cumulative impacts issue. However, because this process may prove to be lengthy, I believe it is incumbent on the Board to renew the Threatened and Impaired rules for at least two years.

I believe, in regard to question six, that current Forest Practice Rules are adequate to deal with the rate of harvest issue. The problem inherent in the "rate of harvest" debate really relates to the issue of roads and road maintenance and will, hopefully, be addressed by the Road Management Plan Regulation and the Board's comprehensive multi-stakeholder scientific literature review to determine the effectiveness of the T and I rules.

In response to question seven I do believe that the current Forest Practice Rules and specifically the Threatened and Impaired Rules are adequate to protect anadromous fish resources and impaired watersheds. Having made that statement, I must follow it with this comment: current rules are adequate protection when departments involved in the review process are fully funded and staffed; when the rules are properly implemented; when essential monitoring is a part of the process; and when departments work together with the regulated public to make the process work.

I further believe that the issues currently before the Board of Forestry (scientific review, Roads Regulation, T and I Rules extension) will help to insure that timber land owners can continue to harvest timber in an environmentally sound way and that the people of California can be assured that the state's forest resources are being protected.

Again, Mr. Chairman, I thank you for the opportunity to respond to the Committee's questions.

Sincerely,

Stan Dixon

Stan Dixon

CALIFORNIA LEGISLATURE

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 21, 2006

Pamela A. Giacomini
41363 Opdyke Lane
Hat Creek, CA 96040

Dear Ms. Giacomini:

As you know, your appointment as a member of the Board of Forestry and Fire Protection is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please return this information to our office by July 10, 2006.

We would also like to receive an updated Form 700, Statement of Economic Interest by July 10th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Board of Forestry and Fire Protection?*

2. *What do you believe to be the most pressing issue or issues that the Board of Forestry and Fire Protection should address in the coming year?*

You were a member of the stakeholder group assembled by the Resources Secretary that drafted the Coho Recovery Plan in 2001. The plan still serves as the basis for the Coho recovery efforts. The recommendations put forth in that plan were consensus recommendations.

3. *In your current capacity as a board member, what is your view of the Coho Recovery Plan? Do you support efforts to implement its recommendations? Would you oppose efforts to weaken the recovery plan?*

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The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies – the Department of Fish and Game and the regional water quality control boards – have statutory mandates that on occasion are more protective of resources and more restrictive of logging activities. Historically, this has created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by the Department of Fish and Game or regional water quality control boards.

4. *Please explain your views on how the Department of Forestry and Fire Protection the Board of Forestry and Fire Protection should act to resolve or address this conflict. To what extent should the board and department act to meet the needs of the other trustee agencies?*

The Board of Forestry and Fire Protection is the lead agency for the preparation of the new environmental impact report for Jackson Demonstration State Forest. There has been significant controversy surrounding management at the forest, and a desire by some to shift the management of Jackson Demonstration Forest toward creating more high-quality habitat and recreational opportunities. In the current environmental impact report discussions, Alternative C represents the Department of Forestry and Fire Protection's historical management approach of the forest. Alternative D represents provisions of the Wilson administration's Citizen's Advisory Committee, and Alternative F generally corresponds with the provisions of SB 1648 (Chesbro) from 2004.

5. *Please describe your vision for the Jackson Demonstration Forest, and indicate what course of action you would support for the environmental impact report. What factors will you weigh in determining which option to support when this environmental impact report comes before the board for approval?*

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments, and (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

6. *Does the board need new authority to deal with this issue? How should the issue of cumulative impacts be addressed by the board?*

7. *Do you believe the rate of harvest should be addressed by the board? If so, how?*

In addition to timber harvest regulations, special regulations apply to watersheds that have threatened wildlife species, streams, or rivers with degraded water quality. These particular threatened and impaired regulations will expire on December 31, 2006.

These regulations must be extended or amended by this October, unless the board wishes them to expire. The threatened and impaired rules were previously adopted by the board in recognition that the Forest Practice Rules were not adequately protective of salmon and steelhead resources and impaired watersheds.

8. *Do you believe that the Forest Practice Rules, including the present threatened and impaired regulations, are sufficiently protective of salmon and steelhead resources and impaired watersheds?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

Don Perata

DON PERATA

DP:KW:dc

cc: Board of Forestry and Fire Protection

HENRY AND PAM GIACOMINI
41363 Opdyke Lane
Hat Creek, CA 96040

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July 9, 2006

The Honorable Don Perata
Senate Rules Committee Chair
State Capitol, Room 420
Sacramento, CA 95814-4900

Delivered via Facsimile to:
(916)445-0596
Attn: Nettie Sabelhaus

Re: Board of Forestry Confirmation

Dear Senator Perata:

As you requested, I am providing to you my answers for the range position seat on the Board of Forestry and Fire Protection I have been appointed to, which is subject to Senate confirmation. I have simply provided the answers by correlating the number of the question with the number of the answer. I hope this will suffice.

1). My position on the Board of Forestry will allow me to bring in a perspective from the range industry that has been missing for quite some time. Of importance to me and what I hope I can help to accomplish is:

a). Analysis of all of the Vegetation Treatment Programs that are under the purview of the Board of Forestry and Fire Protection and work to find a way to make them be more effective in the treatment of wildland fuels. The state needs to aggressively treat wildland fuels while at the same time protect natural habitats, and be cost effective and efficient. Decreasing the risk of catastrophic wildfire will reduce overall costs to the State as well as decrease the risk and costs associated with catastrophic wildfire to the citizens of our State.

b). Promote efficiency and cooperation among agencies to decrease duplication of efforts that are costly to both the State and to private landowners. The agencies of interest are those that nexus on forest, fire and rangeland resources. They include the Department of Forestry and Fire Protection, the Department of Fish and Game, and the Regional Water Boards.

c). Continue to listen, learn and be open to hearing all perspectives in issues that come before the Board. Apply what I hear and learn to make logical and sound decisions on our fire, forest and range resources. Always use the best available science and logic in making decisions and ensure that any regulations we adopt are necessary and prudent.

2). It is staggering to me the number of issues (many of them pressing) that come before the Board. I take my task seriously and thoroughly review all of the issues presented to us. Of the utmost importance at this juncture is ensuring that we have

the resources available to protect the State's forests, rangelands and citizens from catastrophic wildfire.

3). I did serve as a member of the Coho Recovery Team. It was an arduous and very educating task. I believe the Coho Recovery Plan as drafted holds many answers and solutions that can help to guide efforts to recover Coho in many watersheds. I embrace the Plan's non-regulatory basis and the efforts that have come out of it that have helped landowners and other stakeholders to work cooperatively on projects in their specific watersheds.

4). I firmly believe that each agency, as well as the Board, must meet their mandates. As I stated earlier, the nexus between the Department of Forestry and Fire Protection, the Department of Fish and Game and the Regional Water Boards must continue to be worked on to allow for greater cooperation and efficiencies to avoid duplicative efforts. It is no secret that California has many conflicting laws and regulations. In addition, many of those laws and regulations can be interpreted in such a way that creates more conflict, rather than leading to resolution. We must continue to encourage agency and board staff to communicate and find ways to decrease conflict and find reasonable solutions.

5). I will weigh all factors in determining the final direction of the Jackson Demonstration State Forest environmental impact report. As of yet, the Board's contractors have not completed their review of public comment and so we as Board members have yet to review public comment or have our workshop on the DEIR to fully understand all of the alternatives as presented. My vision for JDSF is to maintain the highest forest health; to balance environmental, economic, research and public use components of the JDSF; and to ensure that the legislative mandate for the Forest is met.

6). Cumulative Impacts is a highly convoluted and confusing issue. I think it is crucial to continue to develop and provide the best available science in making decisions. Application of that science is fairly straightforward when looking at one or two practices or resources or looking at one specific project. It appears to me that when we try to fold everything in and then ask to analyze that over decades, under current law it simply cannot be done. We need to be able to apply more programmatic approaches, rather than analysis on a project by project basis, in order to provide certainty to landowners, resource managers and the environment.

7). Data from the Fire and Range Assessment Program (FRAP) under the Department of Forestry and Fire Protection indicate that our forest stocks are far exceeding harvest levels. This ever increasing inventory is actually hurting our forest health and sets the stage for more catastrophic wildfires. Current Forest Practice Rules already address harvest rates by ensuring that there is a level of production (growth) maintained.

8). The Board has a broad stakeholder working group that has been meeting regularly to address the Threatened and Impaired Rules. This group is struggling to get their work completed along with the appropriate analysis necessary in order to recommend the right course of action on the T & I rules. It would be helpful to have additional resources so the scientific analysis can be completed in order to ensure the appropriate protections for watersheds and the fisheries in those watersheds.

Thank you, Senator, for your consideration. If confirmed, I assure you that I will do my best to work on behalf of the State of California to protect our states forest and range resources.

Sincerely yours,

Pamela A. Giacomini

Pamela A. Giacomini

Cc: Mr. George Gentry, EO
Mr. Stan Dixon, Chair

Thank you for your support of our family ranch, enjoy our premium, natural beef !!

James J. Ostrowski
1517 Davis Place Road
Mt. Shasta, CA 96067

July 6, 2006

Nettie Sabelhaus, Rules Committee Appointments Director
Senate Rule Committee
Room 420, State Capital
Sacramento, CA 95814

Dear Ms. Sabelhaus,

I received the letter from Senator Perata dated June 21, 2006, requesting my written response to seven questions for review during the confirmation process for my appointment to the Board of Forestry and Fire Protection. Below are the questions and my responses.

Question #1 – Please provide a brief statement of your goals and what you hope to accomplish during your term on the Board of Forestry and Fire Protection.

During my term on the Board of Forestry and Fire Protection (Board) I have four main goals. They are;

1. To reduce duplication and inefficiencies in the Forest Practices Rules.
2. To develop a systematic process that integrates science and risk management into rule development and review.
3. To promote high standards of forest management.
4. To ensure effective fire prevention and suppression policy and practice.

To accomplish these goals I believe that the Forest Practice Rules and other related regulatory programs need to be reviewed to make sure that they continue to provide sufficient protection to the forest resources at an efficient cost to landowners and tax payers. Any review or development of new regulations should use an open and systematic process that integrates scientific information, a range of solutions, expert opinion and a clear understanding of the long term impacts from policy changes. I intend to use my time on the Board to help create and implement an efficient regulatory program.

Question #2 – What do you believe to be the most pressing issue or issues that the Board of Forestry and fire Protection should address in the coming year?

The Board has many mandates and ongoing responsibilities, but the following are the top 5 issues that I believe must be addressed in the next 12 months.

1. T&I rules extension and review.
2. Jackson State Demonstration Forest EIR and management plan.
3. The Fuel Hazard Reduction Emergency and exemption sunset dates.
4. Multiple regulatory programs for forestry operations in the Lake Tahoe basin.
5. Reorganization of the road construction and maintenance rules including provisions for long term road management and maintenance.

Question #3 – Please explain your views on how the Department of Forestry and Fire Protection should act to resolve or address this conflict (competing or conflicting mandates). To what extent should the Board and department act to meet the needs of other trustee agencies?

The practice of forestry in California involves more than silviculture and production of wood products. Existing regulations and laws require protection of all forest resources including water quality, fish and wildlife, recreation, cultural values and productive capacity. The Board is charged with regulating activities and protecting all forest value on forested lands, while other agencies have overlapping jurisdiction for a specific resource value. I believe this is one of the strengths of our multi-disciplinary review THP review process.

I do not believe the mandates are necessarily conflicting, but instead are duplicative. This has created an inefficient system of regulating forestry operations, but also one that is very thorough in its review of resource issue. The down side has been the creation of a culture of distrust between agencies who believe they are in competition with their sister agencies. Many agency personnel and some members of the public do not understand the overlapping authority and the need for achieving multiple goals in forested settings. The board and all involved agencies must work to meet the objectives of other agencies which will in turn achieve their mandates.

The Board must develop processes for communicating the multiple benefits of forestry operations to agencies and the public in order to demonstrate that all state laws and regulations are being met. Research and monitoring are the keys to this demonstration and need to be a collaborative effort. Communicating the findings of these efforts is the final step to gaining trust and understanding.

Question #4 – Please describe your vision for the Jackson Demonstration State Forest, and indicate what course of action you would support for the environmental impact report. What factors will you weigh in determining which option to support when this environmental impact report comes before the board for approval?

Jackson Demonstration State Forest (JDSF) was primarily established to demonstrate economical forest management. Over time the art and science of forest management has evolved and includes the management of many uses

and values of the forest. My vision for JDSF is to have a management plan and program that allows for continued demonstration and communication of modern forest management practices while allowing for the inevitable changes in forest management techniques to be demonstrated. Any management plan must be flexible enough to allow for testing and demonstrating new ideas and practices that may come forth in the future.

I believe that maximum flexibility must be given to CDF's forest managers to experiment and demonstrate new ideas and techniques for managing the many forest resources and values that are part of JDSF.

The role of the Board in certifying the EIR is to determine if there has been a full disclosure and comparison of potential impacts from implementing the proposed JDSF management plan and to select an option that best meets the goals and policy of the Board and legislative mandates for JDSF. Management plans should be "living documents" with provisions for updates and periodic review.

I will consider the following key elements in my review of the options presented;

1. The accuracy and precision of the EIR's conclusion(s) on significant impacts.
2. The balance between demonstration and testing of modern forest management practices and the demonstration of multiple use of a forest to satisfy the many values derived from JDSF.
3. Public comments related to substantive elements of the DEIR.

Question #5 – Does the board need new authority to deal with this issue? (adequacy of cumulative impacts analysis) How should the issue of cumulative impact be addressed by the board?

The Board's rules already address the potential for significant cumulative impacts (CI) to a wide variety of forest values. The Board has addressed this issue under its existing authority.

The issue of how to evaluate CIs is a continuing discussion among forest managers. Qualitative or quantitative methods of analysis or a combination of the two approaches are used by foresters to evaluate the potential that activities that are insignificant by themselves could become significant if combined with other projects or activities.

The Board's current methodology is commonly criticized for being less than precise and difficult to duplicate. Other approaches have been suggested but they have not fit the varied conditions found across a large state with different sizes of ownerships and operations.

I believe the controversy surrounding the issue stems mainly from a lack of a common understanding of the current condition of our forests. A source for

baseline information needs to be established that is managed across ownership boundaries and that has broad acceptance of the quality of the data. The North Coast Watershed Assessment Program (NCWAP) was a multi agency sponsored program that began to assemble this data and should be given another chance to succeed in shedding light on this issue.

Some have criticized the fact that few THPs have disclosed a significant cumulative impact. At the same time, monitoring that has investigated the linkage between current forest practices and significant CI has not been conclusive. It is widely understood that legacy impacts and land use conversions have combined in some cases to create a degraded condition in some watersheds. The current CI assessment seeks to determine if modern practices will create a CI that can be mitigated. More information is needed before the Board can address any improvements to the system.

Question #6 – Do you believe the rate of harvest should be addressed by the board? If so, how?

The rate of harvest of timberlands by ownership and region was addressed by the Board in the early 1990's with the passage of the MSP rules including the Option A, B, and C approaches for demonstrating a continuous supply of high quality wood products. The recent FRAP report found that for the ten year period of 1984-1994 harvest was less than growth on private lands state wide. This trend was ongoing prior to the enactment of the MSP rules and is now monitored through the MSP regulations.

The rate of harvest question on a smaller scale such as a watershed or sub watershed is addressed in the Cumulative Impacts portion of the Board's rules. The current approach has been to minimize or eliminate project level impacts and to disclose possible cumulative impacts in order to develop additional site specific mitigations. Existing rules such as the adjacency, WLPZ, silviculture and wildlife protection sections also have an indirect impact on rate of harvest.

The Board should monitor the effectiveness of its rules and policies and changes should be made when necessary. New information and ideas are emerging on this issue and a robust debate that includes scientific information and monitoring data is important for the creation of sound policy and regulations.

Question #7 – Do you believe the Forest Practice Rules, including the present threatened and impaired regulations are sufficiently protective of salmon and steelhead resources and impaired watersheds?

The Threatened or Impaired (T or I) rules have been in effect since 2000 with little specific monitoring of their effectiveness. The rules are being implemented properly according to CDF monitoring, but whether they are effective and at the same time efficient, has yet to be shown. Arguments have been made that they

provide too much or too little protection or that the protection they do provide are inefficient and too costly for the benefits that are derived.

The current rules cover every aspect of forest management under the Board's purview that could impact salmonid habitat. The rules are in many cases very prescriptive and include broader intent language. The rules were developed with the best available information and to meet the goals in effect at the time they were enacted.

New information on the potential impacts of forest management on salmonid habitat has been and is being developed since the T or I rules where passed. The Board is working on a process for reviewing new scientific information and integrating the knowledge from this information into a review of rules and as guidance for any changes to rules. I support this effort and have worked to develop a process for integrating scientific information into the rule making and review process.

Thank you for the opportunity to address your questions in advance of the August 16, 2006 hearing. If you have further questions or need additional clarification, I would be happy to respond.

Sincerely,

James J. Ostrowski
Member, California Board of Forestry and Fire Protection
RPR #2187

7-10-06

Gary C. Rynearson

Senator Don Perata, Chairman
Senate Rules Committee
Sate Capital, Room 420
Sacramento, CA 95814-4900

RE: August 16, 2006, Confirmation Hearing for Board of Forestry and Fire Protection

Dear Senator Perata:

Thank you for the opportunity to provide the Senate Rules Committee information regarding my upcoming confirmation. I look forward to meeting with you and the Committee members to discuss forestry issues. As you requested, I have developed the following responses to the questions raised in your June 21, 2006 letter.

1) *Goal statement and discussion of what I hope to accomplish during my term on the Board.*

I believe that we are at cross roads for forest management on private timberlands. The cost and complexity of regulations is forcing some landowners to choose between forest management and alternative uses. Increasingly, the choice is being made to develop lands rather than maintain them in timber production. I believe that the Board must take the lead to develop programs that provide more efficient application of regulations that are less costly to both the landowner and the state, yet still provide for a high level of environmental protection. Solutions may include the coordination of regulations between the two Agencies and four departments that are involved in the review of timber harvesting plans, and the use of long term, landscape based plans. I also believe that the Board must continue to review and improve fuel hazard reduction programs to protect our rural communities that can be implemented through the exemption process. Another important issue is the review of the mission and role of California Department of Forestry and Fire Protection (CDF) as it faces a changing landscape with more demands for non fire emergency services.

2) *What are the most pressing issues the Board should address in the coming year?*

Immediately before the Board is the extension of the "Threatened or Impaired" rules. This issue is set for a hearing on July 12. These rules were passed the Board in 2000 to increase protection for listed salmon species, and have been extended three times. The Board is also in the process of reviewing comments and preparing for a workshop on the Jackson Demonstration State Forest Environmental Impact Report (EIR). Other issues currently before the Board include: The Fire Plan and program

review; the Board's Strategic Policy Program (Based on CDF- Fire and Resource Assessment Program assessment); review of County and City General Plan Safety elements; comprehensive scientific review for Threatened or Impaired rules; and, review of programmatic approaches to timber harvesting to allow for more efficient cumulative effect analysis.

3) *What are your specific duties at Green Diamond Resource Company?*

As Manager of Forest Policy and Sustainability for Green Diamond Resource Company's California Timberlands Division, I am responsible for identifying, analyzing, tracking and actively engaging in the effective management of current and emerging issues related to numerous regulatory bodies and public policy directives which may have a significant impact on the company's ability to effectively manage its timberlands. I work with the division's management team, public affairs and legal staff to develop positions on issues and implement strategies to address specific resource issues and maintain a favorable long-term operating environment for the company in California. To accomplish this, I stay abreast of federal, state, and local political and environmental matters and am actively involved in key state and local business, trade and community organizations.

4) *In your official capacity with the company, have you ever met with any employee of the Department of Forestry and Fire Protection for the purposes of seeking to influence their decision concerning (1) a pending Timber Harvest Plan, (2) the methodology by which timber harvest plans are processed or evaluated by the department, or (3) any policy matter of the department? If you have not met with the department on such matters, is such a meeting within your job description with the company?*

My position does not include direct involvement with the preparation or processing of Timber Harvesting Plans. My interactions with Department personnel have been informational by providing background on our company or participating in tours of our timberlands. I have also met with CDF personnel to seek clarification on the interpretation and implementation of specific Forest Practice Rule sections. These inquiries were general in nature and did not pertain to a specific THP. I have also met with CDF personnel as a Green Diamond representative and a member of the Board to discuss regulatory coordination and more efficient application of regulations.

5) *Please describe your vision for Jackson Demonstration State Forest, and indicate what course of action you would support for the environmental impact report. What factors will you weigh in determining which option to support?*

The final EIR must be consistent with the legislative mandates and the Board's policy for the Forest that establishes experimental and demonstrative forest management as the primary purpose of the Forest, with recreation as a secondary emphasis. The Board's contractor is currently compiling the pubic comments that will be an

important consideration in the decision making process. The Board will have the option to select any of the alternatives, or to blend elements from different alternatives. It may be considered pre-decisional for me to support a specific alternative prior to review of the public comments and outside of a public EIR hearing process.

6) *Does the Board need new authority to deal with the issue of cumulative effects? How should this issue be addressed by the Board?*

Cumulative effects analysis is a very complex subject. A few years ago a report was prepared by Dunn, et al for the Board which found that the cumulative effects analysis was too big, complex and expensive to be taken on by the landowners and that the process should be undertaken the state. The state did attempt to conduct watershed based reviews under the North Coast Watershed Assessment Program. This program provided useful information, but was very expensive and was ultimately dropped.

I do not necessarily agree with the conclusion reached by Dunn, et al. I believe that the best approach to assessing cumulative effects is through long term landscape based permits that allow a comprehensive review of the resources and include a monitoring program. In most cases, the Board has adequate authority to develop these programs. There may need to be some legislation to provide the Board with additional tools to develop these long term plans. The Board, through its Management Committee, is currently reviewing long term permit options and is in the process of developing a road management plan rule package.

7) *Do you believe the rate of harvest should be addressed by the Board? If so, how?*

The current rules do address rate of harvest by requiring logical harvest units separating clearcut blocks and a minimum of 5 years (or in the Coast District, no sooner than 3 years if the regenerated trees are at least five feet in height) before the area next to a clearcut unit can be harvested. Further, harvesting is also limited by the Board's rules for achieving Maximum Sustained Production of high quality forest products. The rules and the THP review process also allow for special considerations where there are unique circumstances. In the case of Freshwater and Elk River, there were concerns about flooding that resulted in CDF placing an annual limitation on the clearcut acres. Ultimately, the Regional Water Quality Board placed additional restrictions on these drainages.

8) *Do you believe that the Forest Practice Rules, including the present threatened and impaired regulations, are sufficiently protective of salmon and steelhead resources and impaired watersheds?*

The "threatened or impaired rules" (T&I) apply to planning watersheds where listed salmonids are present. They do not apply to all waterbodies listed as "impaired" under section 303(d) of the federal Clean Water Act. The Board's Forest Practice

Committee is conducting a review of the available science to determine if the T&I rules are consistent with the current state of research. This review will guide the Board during its review of these rules. The Board has heard comments from several agencies and members of the public requesting that the T&I rules should be retained. The Department of Fish and Game used the T&I rules as interim "take" guidelines for several years after the coho was proposed for listing. However, several landowners have stated that they believe the rules are overly restrictive and that salmon can be protected with narrower or less dense streamside buffers. Unfortunately we have not conducted monitoring to determine the effectiveness of these rules.

I believe that the T&I rules combined with the THP review and approval process (that includes an interdisciplinary review team), provide adequate protection for salmonids species. However, I will reserve final judgment until after the science review has been completed.

Thank you for the opportunity to provide these responses to your questions. I look forward to meeting with you and members of the Rules Committee. I would also appreciate the opportunity to meet with Committee members prior to the hearing and will be calling to schedule appointments.

Sincerely,

Gary C. Rynearson

Gary C. Rynearson, RFP #2117; CF #2831

GCR:hs

Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Boar of Forestry and Fire Protection?

My goal is to create a healthier and safer environment for everyone by supporting effective forestry policy and developing positive forest practices in rural and urban communities throughout California.

What do you believe to be the most pressing issue or issues that the Board of Forestry and Fire Protection should address in the coming year?

In my brief term with the board there seems to be a number of pressing and very important issues facing the board in the coming year. I think the Jackson Demonstration State Forest is a critical issue but on a larger scale the more general discussion about the restoration of our environmental and eco systems are critical to the future of our State.

Please explain your views on how the Department of Forestry and Fire Protection and the Board of Forestry and Fire Protection should act to resolve or address this conflict. To what extent should the board and department act to meet the need of the other trustee agencies?

I believe the Departments need to continue to work on these differences of practice, perceived or real, to obtain long term solutions. This "work" would include, but not be limited to, joint department and board meetings and special or ad-hoc committee meetings convened around specific regional issues that all apply scientific and community input throughout the entire process. The Resources Agency should also use its' leverage to bring together the appropriate departments and boards as well as other Agency Secretaries in resolving any disagreements or conflicts.

Please describe your vision for the Jackson Demonstration State Forest, and indicated what course or action you would support for the environmental impact report. What factors will you weigh in determining which option to support when this environmental impact report comes before the board for approval?

I have spent a considerable amount of time trying to get up to speed on this issue but I believe I have much more to learn about the Jackson Demonstration State Forest before I can ultimately decide or recommend the appropriate option or alternative for the long term management of the JDSF. I will consider and review all scientific research and studies, the most recent and current environmental impact report and all of the input from the local community and Citizen's Advisory Committee.

Does the board need new authority to deal with this issue? How should the issue of the cumulative impacts be addressed by the board?

I do not know the answer to this question. I do understand that cumulative impact assessments are complex and that there are a number of issues to be considered.

Do you believe the rate of harvest should be addressed by the board? If so, how?

I believe the board should apply the appropriate rules or practice that, if in place, would adequately address the issue of the rate of harvest. It appears that there are a number of other conflicting environmental regulations or practices that indirectly and directly affect the harvesting of timber in our forests. Roads, the maintenance of roads, watershed, natural habitat, fish and game, air quality and a number of other very important conditions will be considered in determining a strategically balanced forest harvest plan.

Do you believe that the Forest Practice Rules, including the present threatened and impaired regulations, are sufficiently protective of salmon and steelhead resources and impaired watersheds?

I believe that there needs to be more research and discussions around the threatened and impaired regulations because the salmon and steelhead resources and the impaired watersheds need to be protected.

NORTHERN CALIFORNIA
CARPENTERS
REGIONAL COUNCIL

July 18, 2006

To: Senate Rules Committee
Attn: Ms. Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814

Statement in support of the confirmation of Robert Alvarado as a member of the California Transportation Commission.

Goals and Objectives

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California Transportation Commission?*

For many years the transportation delivery system has been a challenge, and this has resulted in a lot of bad press. One of my main goals is to turn around the perception that common sense is not a trait in the CTC or Caltrans. We can begin with a couple of steps that will improve our delivery system and therefore our reputation as well:

a. Make sure that all projects coming to the commission are actually ready for funding. No longer should we allow local agencies or Caltrans to tie up funds for projects that are not ready to come on line. We should limit projects to one six month extension.
b. Survey all projects that are six months beyond the scheduled completion date and find out whether we are responsible for the delay. We must become good owners. Two things happen when we get a reputation as a good owner:
    i. We get more bids.
    ii. Our bids are more competitive because contractors don't have to build in the cost of legal action to get the job finished and retention paid. With the construction market getting ready to boom we want to be known as the owner that everyone wants to work for- we have good drawings, we take responsibility for our change orders and we pay our bills.

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(510) 568-4788 tel | (510) 568-7916 fax | www.norcalcarpenters.org

2. *Please describe experience you have that enhances your ability to serve on the California Transportation Commission, such as any transportation-related boards or commissions on which you may have served.*

As the Executive Officer of the Northern California Carpenters Regional Council I represent the men and women that work on our bridges and highways. I interact on a regular basis with the contractors who bid on transportation project. Over the years I have heard many good ideas for better ways to deliver the same project for less money in a shorter time frame. I think I can bring the stakeholders together and be rid of the redundancies that plague our system.

3. *Please provide a brief assessment of the challenges that you think face California's transportation system and what, if any, recommendations you would make to improve that system.*

The biggest challenge that faces us is to become a good owner, and deliver projects on time. If we can prove to the public that we can deliver on the promises we make they are more apt to support the money needed to accomplish our goals.

4. *What, if any, specific area do you intend to focus on as a member of California Transportation Commission? Do you currently serve on any subcommittee, working group, or task force of the commission?*

I intend to focus on the delivery and completion stages. I have only been to one meeting and have not been assigned any committee appointments.

The Budget

5. *Please comment on what this year's budget agreement means for the state's transportation system. What does this commitment of funding allow the commission to do this year that it has not been able to do in recent years due to scarce funding?*

The budget agreement and all the monies involved only allow us to START catching up on maintenance and fund projects that have been put on hold for years. My first meeting the agenda included $4.7 billion dollars worth of projects. It was the first time in the term of some members that they actually got to vote to fund projects. We need a steady supply of funds so the commission can be pro-active in maintenance and traffic flow.

6. *The availability of $3.5 billion presents challenges for the commission. Of these funds, approximately $2.5 billion will be allocated by the California Transportation Commission. Are there a sufficient number of projects ready to utilize these funds in a timely way, or do you expect to see balances accumulate in the State Highway Account and the Traffic Congestion Relief Fund?*

With the zeroing out of the transportation budget over the last couple of years there are enough projects to utilize the funds we have. However, again, projects that seek funding should be ready to go to bid and construction started within six months. I don't foresee a balance in either fund for the foreseeable future.

7. *What actions, if any, do you anticipate the California Transportation Commission taking to ensure that funds are allocated in as efficient and as timely a manner as possible?*

I will ask my fellow commissioners and staff to be vigilant in making sure all projects brought before the commission are ready to bid and only one six month extension should be allowed. For those projects that we have already committed funding, and there is no start date, that money should be returned to the commission and allocated to projects that are ready to proceed.

The Transportation Bond

8. *As a sitting member of the California Transportation Commission, please summarize your view of the pending transportation bond and its potential impact on the state's transportation system.*

I applaud the legislature and the administration for the leadership shown getting this bond on the ballot. When the bond passes and money starts flowing we can begin to reverse years of neglect. Even with the budget AND the bond monies there is still a lot more that must be done. This total is only a down payment and if we want to catch up and become pro-active we'll need another bite at the apple. To get that support from the public, we'll need to show results.

9. *What challenges have you or the commission staff identified as the most difficult to overcome relative to allocating bond funds on the timeline called for in the pending bond?*

I truly believe we can overcome the engineering hurdles but we will need a way to expedite the approval process on projects that are already existing (For example, the. Highway 99-205-widening). Where there is an existing footprint or right of way we need to be able to expedite the approval process.

10. *What activities has the commission undertaken in preparation for its role in allocating funds made available by the passage of the pending bond? What role, if any, will you have in those activities?*

It is a fine line we walk . . . How do you tell local agencies to start getting projects ready to go on line without committing funding before it is available.. We don't want the public to think we have an agenda on project priority or we can lose support. We have, I think, the ability to encourage local agencies to prioritize and get their projects on some sort of timeline so that we can move quickly and don't end up with balances in any of the accounts.

11. *One area of investment in the pending bond which is relatively new for the state to be involved in is the area of goods movement. The bond would provide some $3 billion related to improving the state's trade corridors. Do you think this area of investment is an appropriate one for the state to be involved in? Please explain your answer.*

I believe it is in the state's best interest to be involved in the area of goods and services movement. This is crucial to our ongoing economic development, and therefore an appropriate role for the State to play. By improving goods movement in the corridors traffic is also mitigated. One only has to look at the overflowed freeways both in the north and the south to see miles of cars and trucks that are sitting still. By improving rail and moving the trucks off the lanes occupied by the public everyone wins.

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July 24, 2006

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus,

I am pleased to provide a response to the following questions and to enclose an updated Form 700, Statement of Economic Interest.

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California Transportation Commission?*

My philosophy is guided by a "top down" approach in reviewing program objectives and setting goals. In that sense, I hope to further the development of transportation projects that support the California economy and provide traffic congestion relief throughout the state in an equitable manner. I would also like to focus on reviewing and improving systems management for tracking individual projects from inception through completion, including financial reporting and management systems. One of several goals is to strive for improved monitoring of the many projects, from initial proposal to completion, under the oversight of the Commission. I believe that this type of statewide summary report would improve our understanding of each project's contribution to an integrated transportation system that meets the needs of each region and the state as a whole in the movement of goods and people. Additionally, I am very interested in working with the legislature and other parties in addressing a review of the various revenue sources that support the maintenance and construction of the state's transportation system.

2. *Please describe experience you have that enhances your ability to serve on the California Transportation Commission, such as any transportation-related boards or commissions on which you may have served.*

I previously served on the Contractors State License Board from 1992 to 2000, providing me with a broad understanding of the relationship between various governmental departments and the private sector. As a member of the San Diego Regional Chamber of Commerce Board of Directors since 2001, I have been actively involved in the advocacy for numerous infrastructure projects at the local and regional levels, including the Imperial Valley Water Transfer Agreement. In particular, I am very involved in issues related to the improvement of San Diego International Airport and the expansion of San Diego's aviation infrastructure to meet the region's future demands. These experiences have illustrated the importance of water and transportation infrastructure to the state's economy. Finally, my 15 years experience at Merrill Lynch & Co. provided me with invaluable exposure to the financing plans of both public and private infrastructure projects.

3. *Please provide a brief assessment of the challenges that you think face California's transportation system and what, if any, recommendations you would make to improve that system.*

The challenge lies in addressing a large backlog of uncompleted transportation projects that are negatively impacting goods movement and the state's economy, these uncompleted projects are also responsible for creating serious traffic congestion, thereby contributing to air pollution, reduced productivity and a degraded quality of life. The financial requirements to maintain the existing system are becoming greater each year as normal maintenance is deferred in times of tight budgets, adding to the backlog of uncompleted projects. Additionally, there is a need for improved connectivity between airports, seaports, railways and highways. Finally, work must be done to establish a steady revenue source for transportation funding; first to address maintenance needs and secondly to address capital investment. A consistent and reliable source of funding would prevent the inefficiencies associated with a boom-bust cycle of construction and help prevent the deferment of critical maintenance work, which only becomes more costly in the future.

4. *What, if any, specific area do you intend to focus n as a member of California Transportation Commission? Do you currently serve on any subcommittee, working group, or task force of the commission?*

My intention is to focus on the timeliness and usefulness of financial reports and project reports and an overview of the entire system, including a review of performance measures. I believe it is important to closely monitor the allocation of funds to ensure their timely utilization by the particular region or agency. In February, 2006 I was assigned as the Commission liaison to the **Technical Advisory Committee to Aeronautics** (TACA) for the Aeronautics Division of Caltrans. In July, 2006 the Commission proposed the formation of new committees and liaisons addressing various issues associated with transportation and the proposed Transportation Bond package. I have been assigned to the **Planning Committee** and as a Commission liaison to the **Performance Measures,** the **State and Local Partnership Program Guidelines** and the **Public-Private Partnerships (AB 1467)** bond work groups.

5. *Please comment on what this year's budget agreement means for the state's transportation system. What does this commitment of funding allow the commission to do this year that it has not been able to do in recent years due to scarce funding?*

This year's commitment of funding to transportation was very important to the state. First, it will allow the commission to continue funding the highest priority projects and those significant projects that will have the most immediate impact on relieving traffic congestion. Secondly, it will allow a broader distribution of funds to many additional projects that had been delayed for several years. But more importantly, it sent a signal to local and regional agencies, and the private sector construction industry, that the administration and the legislature recognize the importance of transportation funding to the state's economy and quality of life. I further believe that this budget agreement, when coupled with the Transportation Bond, indicate the administration and the legislatures' long-term commitment to address the transportation infrastructure needs of the state in a manner that has not occurred for four decades. This truly represents a vision to look towards the future and helps assure California's place in the global economy.

6. *The availability of $3.5 billion presents challenges for the commission. Of these funds, approximately $2.5 billion will be allocated by the California Transportation Commission. Are there a sufficient number of projects ready to utilize these funds in a timely way, or do you expect to see balances accumulate in the State Highway Account and the Traffic Congestion Relief Fund?*

Upon reviewing and approving the 2006 State Transportation Improvement Program (STIP), I believe that there are more than an adequate number of projects available to receive funding and to begin construction in a timely manner. Additionally, Caltrans has been very effective in completing the required work so that projects are deliverable and ready to begin construction on schedule. Therefore, I do not anticipate an accumulation of funds in either account.

7. *What actions, if any, do you anticipate the California Transportation Commission taking to ensure that funds are allocated in as efficient and as timely a manner as possible?*

I anticipate that the commission's application of its STIP guidelines, in consultation with the various regions, would ensure that funds are allocated in an efficient and timely manner. I would add that many other projects proposed for the STIP were not included in the 2006 STIP due to a lack of available allocation capacity. This backlog of projects provides us with a ready list of projects to draw from in the future.

8. *As a sitting member of the California Transportation Commission, please summarize your view of the pending transportation bond and its potential impact on the state's transportation system.*

The transportation bond is very important to the state's transportation system and I view it as the most significant investment in our transportation system since Governor Pat Brown Sr. expanded the state transportation system in the 1960's. The transportation bond serves to kick-start the major capital investment that is needed to provide the necessary infrastructure for the state's economic future. Although there will be a need for additional funding to complete the necessary infrastructure build out in the future, this bond provides the breathing room for all interested parties to review the primary long-term funding sources for transportation projects.

9. *What challenges have you or the commission staff identified as the most difficult to overcome relative to allocating bond funds on the timeline called for in the pending bond?*

Clearly, the most immediate challenge lay in the preparation of the guidelines for certain categories of expenditure, such as the Mobility Corridors and Goods Movement areas. It is most important to have these guidelines completed in an expeditious manner so that regional transportation agencies have sufficient time to prepare projects for presentation to the commission. Because of the immediate deadlines contained in the legislation for guideline preparation, project proposal and project selection, the commission has begun consulting with all interested parties to develop these guidelines although the bond has not yet been approved by the electorate.

10. *What activities has the commission undertaken in preparation for its role in allocating funds made available by the passage of the pending bond? What role, if any, will you have in those activities?*

The commission has embarked upon an open and transparent process with all interested parties to develop those guidelines that are time critical to the process. Current STIP guidelines serve as a starting point for the development of these new guidelines because STIP guidelines are well known and accepted by all parties as being fair and objective. The commission has held at least one open workshop to begin this work, and all commissioners have an opportunity to participate in this dialogue. Additionally, the commission chairperson recently assigned commissioners as liaisons to the various Transportation Bond Work Groups; I have been assigned to the **Performance Measures**, the **State and Local Partnership Program Guidelines** and the **Public-Private Partnerships (AB 1467)** work groups.

11. *One area of investment in the pending bond which is relatively new for the state to be involved in is the area of goods movement. The bond would provide some $3 billion related to improving the state's trade corridors. Do you think this area of investment is an appropriate one for the state to be involved in? Please explain your answer.*

I wholeheartedly agree with the state's investment in the area of goods movement for several reasons. There is a long history of significant federal and local government investment in transportation infrastructure for the benefit of goods movement. These investments have been made on a national basis, as with the interstate highway system, and on a local basis, as with individual seaports and airports. In today's global economy, we have clearly learned the economic benefit that these transportation hubs and systems contribute to the state's economy. California's air, land and sea ports serve as import and export hubs for trade with Asia, Canada, Mexico and other trading partners. But as the volume of trade increases, the financial scale and immediate necessity of these projects to accommodate the rapidly growing trade calls for additional partners in order to mitigate the investment risk. The state is well positioned to provide this financial assistance and I believe that doing so is in the public interest. The failure to improve California's capacity for goods movement provides an opportunity for other competitors located outside California to gain an economic benefit at our expense.

12. *Are you still a member on the San Diego Public Facilities Financing Authority (PFFA)?*

Yes, I remain a member of the San Diego PFFA; my term of appointment is indefinite, I serve at the pleasure of the Mayor of San Diego.

13. *Does the San Diego Public Facilities Financing Authority finance publicly-owned transportation facilities? If so, which ones?*

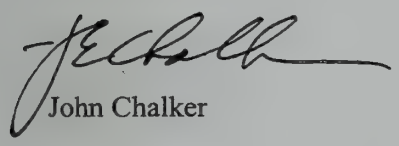
The San Diego PFFA does not finance any publicly-owned transportation facilities. The PFFA exists for the purpose of assisting the financing of certain public facilities improvements of the City of San Diego. Currently, there are approximately $1.3 billion in publicly issued revenue bonds outstanding for several public facilities including a sports stadium, a ballpark, fire and life safety facilities, a wastewater system and a water utility. Since its establishment in 1991, the PFFA has not financed any publicly-owned transportation facilities.

14. Does the San Diego Public Facilities Financing Authority utilize state transportation funds in its financing activities?

The San Diego PFFA does not utilize state transportation funds in its financing activities.

Thank you for this opportunity to share my views on various transportation issues. I look forward to the confirmation process and am available at your convenience to provide additional information.

Respectfully Submitted,



John Chalker

Enclosure: Form 700, Statement of Economic Interest

CALIFORNIA LEGISLATURE

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 23, 2006

Eric F. Sandel
12003 Ski Run Road
Truckee, CA 96161

Dear Mr. Sandel:

As you know, your appointment to the Lahontan Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by July 17, 2006.

We would also like to receive an updated Form 700, Statement of Economic Interest by July 17th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Lahontan Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*

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3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. Regional board budgets are not reviewed individually by the governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board, instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

5. *Do you believe the Lahontan regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from storm water. In the past these permits have imposed best management practices on dischargers, under the assumption that the use of those practices will result in water quality improvements. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

6. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*

7. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

8. *In what specific ways might your regional board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

10. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and total maximum daily load programs.

Currently regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

11. *What schedule currently exists at the Lahontan regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the Lahontan regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

12. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Nitrate Contamination

Several sanitation districts in the southern part of the Lahontan region have historically used waste water effluent to irrigate crops and spread other treated sewage waste on barren land to soak into the ground. Groundwater has been contaminated with nitrates that come from this sewage waste.

13. *Is the Lahontan board addressing the matter of nitrate contamination of groundwater caused by the application of sewage effluent to crops and land? Have any enforcement actions been taken?*

14. *How are the sanitation districts responding to this groundwater contamination? Are their plans sufficient to protect and cleanup groundwater?*

Lake Tahoe

The clarity of Lake Tahoe has been declining for decades. More than half of the nitrogen feeding algae growth in the lake comes from air pollution, much of it from nitrous oxide emitted by cars. Fine sediment is also a problem with studies showing road dust to be a significant factor. An invasive aquatic weed, Eurasian watermilfoil, is threatening the clarity of the lake.

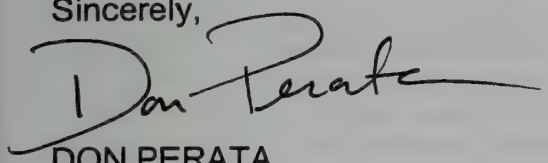
15. *Does the Lahontan board have any plans for restoring the clarity of Lake Tahoe? Specifically, is nitrogen and fine sediment loading being addressed?*

16. *Please describe the options for the eradication of the invasive aquatic weed Eurasian watermilfoil. Are there plans underway to eradicate it? If so, please describe them. If not, are plans being developed?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your time and cooperation.

Sincerely,



DON PERATA

DP:KW:dc

Eric Sandel
WQCB, Lahontan
Responses

17 July '06

The Honorable Senator Don Perata, Chairman
Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Reference: Confirmation by the Senate of my appointment to the Lahontan Regional Water Quality Control Board

Dear Senator Perata,

Thank you for the opportunity to address the important issues contained in your letter of June 23rd. My answers are in the same order as your letter.

#1 Statement of Goals and the Means to Achieve Them

A. Improving water quality at Lake Tahoe
The Regional Board has very active programs and research for Tahoe which are now centered around putting the Tahoe TMDL in place. This has led, finally, to the first complete computer model, based on years of research, of the Tahoe system. I will participate in assigning where and what kind and amounts of discharges can be allowed, how much reduction is required of what parties, and of assessing results and modifying the TMDL as appropriate.

B. Encouraging water reclamation
Growing population without growth in water supply means we must invest in more and better reclamation. Effluent must be used to recharge aquifers, but the quality of this water must be increased. I will continue to encourage board staff and fellow members towards achieving the necessary levels of effluent quality by setting appropriate technical standards, based on research, for regulated dischargers.

C. Reducing water pollution
I will continue to promote better monitoring and, as necessary, regulation of golf course use of fertilizers and chemicals as potential polluters of local and regional aquifers. This is done when Waste Discharge Permits come up for renewal or when they are revisited for other reasons.

State and Regional Board Roles

2. **Support from State Board and Regional Board Staff**
   Regional Board staff is both competent and helpful to board members. Presentation of complex material is generally clear; greater details are often elicited by board members in the course of presentations by staff at board meetings. There is ongoing interaction with state board staff by our chair and by the whole board at state-wide regional board conferences (WQCC), typically twice a year. A board member may contact any member of staff at any time, though this must be restrained if the question is about an enforcement matter.

   Improvement is generally a matter of resources. The regional board staff does an excellent job, but are frequently stretched because of budgets and difficulty in filling some positions. Even with the different focus and motivations of state service, it would help if we could be a bit more competitive with private industry.

3. **Ethics and Conflict of Interest Training**
   Board members see tapes and participate in web-based education and training from the state board's counsel on ethics issues and they are a regular workshop in the WQCC sessions. Board legal counsel and our Executive Officer are highly tuned to conflict issues. Anytime a board member has a question on possible conflict, we ask. There is nothing particularly mysterious about knowing if there is a conflict and board members are conservative to avoid even the appearance of a conflict. I have recused myself on several occasions due to economic conflicts (where I have worked for the responsible party in an action before the board).

4. **State Board/Regional Board Relationship**
   The regional board has very little flexibility in how its resources are assigned; the state board assigns resources by program, such as TMDLs, permits, underground tank cleanup, basin plans, etc. The regional board can suggest moving resources, but typically only within any given funding program, not between programs. The regional board can set priorities within programs, but this is subject to state board staff review.

   The diversity between the various regional boards, each created based on natural regional differences, needs a consolidated presentation to be effective. This is the state board's role as it is probably impractical for the Legislature and the Administration to interact with each of the nine regional boards.

   State-wide consistency is a worthwhile goal, but will be tempered by the accommodation of regional differences. There are some issues that need state-wide guidance from the state board, such as effects of pharmaceuticals on drinking water supplies or on

aquatic life. However, California's highly diverse climate, economics, terrain, etc., mean that there is strong need for the localized attention each regional board brings. It is thus appropriate that similar activities may need to be regulated differently based on these regional differences. This is a better outcome than having satellite offices of the state board replacing the regional boards because it inserts local knowledge and interests, to a certain extent, into what could easily be an inflexible bureaucracy.

Transparency in government decision making is always better, except in certain well defined instances. The regional board is a part of the Administration which means we are obliged to follow its procedures when dealing with housekeeping issues like budgets, etc. The board process itself is very open and structured for full disclosure and fairness.

5. **Adequacy of Funding**
   No, the regional board is not adequately funded. Evaluations have shown that funding is about one third of what is needed to fully accomplish the work assigned. As new laws and programs are added to the existing set, funding does not increase commensurately.

   Yes. Three under-funded activities: Non-point source including urban and construction related stormwater, TMDL implementation (which overlaps non-point source in our region) and basin planning.

Water Quality Permitting

6. **Best Management Practices (BMPs)**
   If the regional board had enough funding for oversight of each site, the BMPs, correctly selected, applied and maintained would work They are much more cost effective than custom engineering for each location. As it is, BMPs are applied from a handbook of standard methods, usually doing the minimum required and there is not enough budget to get board staff around to each location.

7. **Versus Numeric Limits**
   There is no question that numeric limits are a superior enforcement tool, but it is simply not possible to require this level of engineering and technology for small scale projects. Larger projects would probably use a treatment facility to assure that they complied if we imposed limits instead of assuming that BMPs do the job. Smaller projects cannot afford this. As techniques and knowledge improve, we will probably move the crossover point between these two means.

Enforcement of Water Quality Laws
Apparently the referenced report has never been given to the regional boards, only discussed in a briefing for the executive officers. I can only speak to my experience on the Region #6 board and can say that we have had many enforcement actions, some with very significant penalties. These, of course, are administrative, not criminal actions. Historically, I believe it is correct to state that criminal prosecutions for environmental crimes do not have a high success rate.

8. **Improving Enforcement**
   For our regional board, the level of enforcement effort is limited by the level of funding. Our staff is effective and efficient, but we simply cannot afford enough of them. To do more enforcement, we must reduce the amount of inspection and review, or visa versa.

   As we have been imposing stricter compliance schedules and raising penalties levels, the responsible parties have been more likely to bring a vigorous defense before the board. This is expected, of course, but it takes more staff resources to prepare the case for presentation to the board.

9. **Enforcement Tools**
   Administrative action can be quick and effective if there is enough staff resource to pursue it. The more we able to do, the stronger the public policy message we send. Our experience with legal referral for prosecuting violators has been mixed. It is much more expensive and hugely consumptive of staff time to provide case information to the attorneys. On the other hand, it can provide remedies that are not available under the Water Code. Having adequate staff would allow use of more administrative actions, the most effective tool in almost all cases.

   Another point about administrative action is that it typically is done in public meetings that can receive considerable local publicity.

Water Quality Monitoring
Monitoring is essential to identify problems and to evaluate the effectiveness of solutions.

10. **Monitoring Activities**
    A. Monitoring within Permits. Our region has few WDRs. We make use of the monitoring information these provide.
    B. Other monitoring: Department of Fish and Game, SWAMP, Monitoring of Tahoe by UC Davis and USGS, surface water purveyors. Funding is typically limited. The regional board encourages monitoring and the exchange of the data collected.

Funding – Tahoe monitoring is usually state and federal funding. SWAMP and DFG are state funded. We have some local monitoring that is locally funded.

Priority- Monitoring should be a higher priority. It is always best to make decisions with adequate knowledge. The equipment and techniques required to monitor water quality are becoming less expensive and more widely dispersed. We should encourage this trend.

Improving Effectiveness – Funding for regional and state web-based databases into which all water quality monitoring data will be copied. We don't have a very good handle on all the data that is being collected. If we first gather the data, no matter in what format, we can later deal with making a more uniform presentation. All collaboration in this area will be good.

11. **Schedules for TMDLs and Identifying Impaired Waters**
The regional board is regularly informed on TMDL development. We have three kinds of TMDL situations:
   A. Naturally impaired water bodies – waters that are listed as impaired where the listing should be modified or removed because the impairment is not human caused.
   B. Listed water bodies based on earlier standards and science whose listing should be revisited and modified as required under today's standards. We expect that some water bodies will be de-listed.
   C. We are proceeding with priority listed water bodies such as Lake Tahoe which demands more than 50% of our total TMDL budget. The technical TMDL will be completed within the next few months. The implementation plan will be at least two years beyond that.
   D. TMDLs must be based on specific research. In our region there are not many one-size-fits-all opportunities; where there are, we have been grouping TMDL research and writing to maximize efficiency and minimize time.
   E. TMDL work is under-funded. More funding will produce more TMDLs.
   F. Since 2000 we have addressed 34 waters on the 303(d) list either through TMDLs, Basin Plan amendments or new assessments that support de-listing. This is over 30% of the water bodies on the older 303(d) list of 104 bodies. The "official " count, however, does not recognize any action other than producing a TMDL.
   G. Our board does not have resources devoted to finding if additional water bodies are impaired.
   H. A significant result of TMDL implementation will be amending existing permits and waivers and the adopting of new permits and waivers. This increases the workload within an already under-funded program.

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12. Steps to Implement TMDLs

Modifying existing and issuing new permits and waivers will be required (see #11). Once these are in place, monitoring is required to see they are correctly carried out and to measure the effectiveness in reducing the impairment(s). This in turn can lead to modifying the TMDL, permits and waivers to make corrections.

The role of other agencies can be key. These include the USFS, the cities and counties, the Resource Conservation District (grazing) and the CA Department of Forestry/Board of Forestry for non-point source. Point-source dischargers, typically public agencies are under WDR or NPDES permits. The board has enough authority and enforcement power to take what action is required, but, in the case of non-point source, at least some of the results rely on the actions of the public. Results can take some time.

The CA Dept. of Forestry/Board of Forestry are a special case. They establish and implement forest practice rules to minimize impacts from forestry activities under their jurisdiction. These rules can require certain actions (the Water Boards can only specify *performance* measures, not specific actions). In the absence of forest practice rules to address water quality problems, the board must also regulate the activity. This requires more staff on the ground.

13. Nitrate Contamination

Yes, the board has spent and will be spending many days on hearings and workshops dealing with nitrate contamination for LACSD #20, Palmdale, and for other dischargers and instances.

A Cleanup and Abatement order was issued to LACSD in 2003 that requires submittal and implementation of a cleanup plan.

A 2005 resolution approved the plan which will cleanup nitrate that is above the drinking water standard and requires development of a plan to address remaining degradation that addresses the water overdraft situation. The board will consider this new plan in September

14. Response and the Adequacy of the Response

LACSD has developed and has begun implementation of a plan. Implementation was delayed, in part, by negotiations with the land owner, L.A.World Airports, to gain their approval for the activities.

LACSD has also developed a facility plan that will end the discharge that caused the groundwater contamination. Because of the separation between that part of staff responsible for bringing enforcement action and the board itself, while it seems certain that enforcement action will be taken, I do not have certain knowledge. Also, because of a lawsuit brought on the point of compliance dates, further comment would not be appropriate.

15. Lake Tahoe

Please also refer to my answers to Questions #1 and 11. Our board is collaborating with the NV Division of Environmental Protection on the Tahoe TMDL. The implementation of this TMDL is being developed within the Pathway process that involves the Tahoe Regional Planning Agency and the USFS.

At the same time, there are many projects being implemented to address the discharge of nutrients (nitrogen and phosphorous) and fine sediment. These projects are required by stormwater NPDES permits issued to Tahoe municipalities and an MOU with the USFS. The projects are part of the $900 million Environmental Improvement Program that is being funded by federal, state, local and private funds.

16. Eurasion Water Milfoil Eradication

There are a few options to address this problem including:

A. Reducing the nutrients that are needed to support this weed and the other weeds that would probably replace Eurasian water milfoil when it is eradicated.

B. Mechanical, diver assisted or dredging, weed harvesting to reduce the opportunities to spread the weeds due to motorboats.

C. Implement a program to monitor boat launching to ensure that weeds are not being brought into, spread within or leaving Tahoe.

D. Chemical treatments.

Some of these techniques that have been implemented, but we have not had reports of success or failure yet. I have not heard of a Tahoe-wide effort to develop a strategy and the funding to address this problem.

Thanks for the opportunity to answer these questions and please fax, call or email if you need any clarifications.

Yours truly,

E. Sandel

Susan Ritschel's response to questionnaire re: Senate Confirmation of reappointment to the San Diego Regional Water Quality Control Board.

1. *Statement of Goals.*

During my tenure as a member of the Regional Board, it is my goal to assist in the effort to improve water quality within the San Diego region.

2. *Do you receive adequate support from the State Board and Regional Board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*

While the issues before us are quite complex, the Executive Officer (EO), Regional Board staff, and Chairman Minan have all been readily available to respond to technical questions both prior to and during our formal meetings and hearings. Additionally, since my initial appointment to the Board, there have been two WQCC meetings in Sacramento which provide all Regional Board members statewide the opportunity to come together in an informal manner to discuss general water quality issues, solutions, and matters of statewide importance. I have had the opportunity to attend one of these sessions, and it was very informative.

It would be helpful to meet on a more informal basis periodically with staff and the EO to review issues, policy, etc. between the monthly board meetings, and more frequent updates provided by the State Board in terms of major policy issues and efforts underway.

3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?*

As a new board member, last year I received a comprehensive briefing by the then State Board attorney Craig Wilson that covered topics including the role of board members and staff, the relationship between the EPA, State Board and the Regional Boards, the various laws applicable to Regional Board decisions (the Porter-Cologne Act, the Federal Clean Water Act, etc.), and conflict of interest regulations.

Since serving on the board, I have not been required to recuse myself for any reason, including a potential conflict of interest.

4. *What is your view of the relationship between the State Board and your Regional Board? Could coordination and/or accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

During this past year I have witnessed improvements in the interaction between the State and Regional Board, likely due to new leadership at the State Board with Tam Doduc serving as its chairman, and the assignment of a new State Board liason (Jerry Secundy) to the San Diego Board. During the next few years I would encourage increased communication between the State and Regional Boards, and any efforts that would lead to an improved alignment of policies, goals and objectives between the State and Regional Boards. Certainly, an appeals process is an important component of any regulatory or legislative process, however, with an increased alignment and understanding by the Regional Boards of the intent of the State Board, I would hope we can reduce the number of appeal actions that are not only time consuming, costly and burdensome for applicants to go through, but for the State Board as well.

5. *Do you believe the San Diego Regional Board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

While the San Diego Regional Board has been relatively successful in accomplishing its required functions, at this point the TMDL implementation function and participation in the CEQA process are not funded, which will likely hamper the future effectiveness of these activites. The TMDL implementation includes modifying discharge permits and overseeing the implementing actions, which are exceedingly important tasks if we are to ensure long term water quality improvement resulting from the TMDL process. Lacking a dedicated funding source the implementation is currently added onto existing regulatory programs – primarily permitting at this time. Over time either the existing regulatory programs, the TMDL implementation or both will show declining performance as a result of this added workload.

With regard to participation in the CEQA process, at this time the Regional Board staff simply is not funded to participate in pre-project scoping meetings and reviewing and commenting on the resulting environmental documents (EIRs, Negative Declarations, etc.). This is an important activity to ensure that water quality protective measures are incorporated into projects in the early stages of development. Due to a lack of funding, our board staff does little work in this area.

6. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*

One of the crucial roles of the Regional Boards is to regulate the discharge of waste, and it is important that we look at the source, the waste stream, and the receiving waters. Point source dischargers are, by their nature, more easily regulated by imposing numeric limits, while non-point source dischargers pose a more difficult challenge. The results of a State Board initiated study entitled the Stormwater Panel Recommendations on the Feasibility of Numeric Effluent Limits Applicable to Storm Water Discharges concludes that it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs, and in particular, urban discharges. However, the panel suggests that it is possible

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to select and design said BMPs much more rigorously with respect to the physical, chemical and/or biological processes that take place within them, providing much improved water quality results. As a Regional Board member, I am very interested in reviewing the public comments that will continue to be received through the end of July regarding the panel's recommendations, and will be attending the July 28 workshop in Pasadena. If numeric limits are indeed scientifically determined not to be feasible at this time, then I would advocate for more effective and stringent BMP applications for the management of storm water discharges and the attainment of receiving water quality objectives.

7. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

Refer to the above response to question #6.

8. *In what specific ways might your Regional Board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

During my tenure on the Board, the Regional Board staff has been very aggressive in terms of issuing Enforcement Actions, Notices of Violation, and tracking ACLs, each of which is reported on a monthly basis by the Executive Officer to Board members. I view the continuation of this very proactive and aggressive approach as crucial if we are to be successful in restoring beneficial uses to the impaired water bodies of the San Diego region.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

The Regional Board has a variety of enforcement tools available. These include the Cease and Desist Order, Cleanup and Abatement Order, Time Schedule Order, order requiring submission of technical reports pursuant to CWC Section 13267, administrative imposition of monetary penalties (ACLs), referrals for judicial enforcement and the Notice of Violation. While certainly not always appropriate or warranted, the imposition of monetary penalties (ACLs) is one of the most effective tools available. The Notice of Violation, issued when a violation is first detected, is also quite an effective enforcement tool. Approximately 90% of the San Diego Region's total enforcement actions are NOVs. The Board has been very consistent in issuing ACLs when there has been no response or an inadequate response to NOVs. Most dischargers put forth significant effort toward correcting violations when noticed by a NOV, motivated by the threat of an ACL if the violation is not corrected.

10. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher*

priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?

Monitoring activities mandated by the Regional Board and conducted by outside parties include Compliance Monitoring, Intensive Surveys, municipal Storm Water Monitoring, and Investigation Monitoring, which includes the Regional Harbor Monitoring Program. All monitoring must be done in accordance with proper quality assurance and quality control. Compliance monitoring ensures compliance with the Basin Plan, WDRs, and cleanups through implementation of a "self monitoring" program. Intensive monitoring surveys provide detailed water quality data to locate and evaluate violations of receiving water standards, to develop TMDLs and allocations, and to assess water quality conditions. The municipal storm water monitoring program is a requirement of the Regional Board's municipal storm water discharge requirements. Investigation monitoring can be ordered by the Regional Board in response to an inspection, complaint, or spill, or as part of an investigation of the quality of waters of the State.

Monitoring performed by outside parties is funded by the party responsible for conducting the monitoring. The Regional Board provided $100,000 in matching funds for the Regional Harbor Monitoring Program. Outside parties may seek State Grants to fund all or part of required monitoring.

One of the biggest challenges facing the Regional Board and all the Water Boards is ensuring that all monitoring programs in our region (and Statewide) produce comparable data. A second challenge is creating an electronic monitoring data management system to make data accessible to staff and the public, and to more efficiently archive data. The San Diego Regional Board is requiring that monitoring conducted by outside parties and monitoring funded by State grants by conducted according to the SWAMP Quality Assurance Project Plan. This step is essential to ensuring that monitoring programs produce comparable data.

Effective water quality monitoring is critical in evaluating current water quality and the health, safety and welfare of the public, as well as the progress of clean-up efforts and compliance with discharge permitting requirements. While current funding levels do provide for some level of monitoring, the bulk of the burden rests with the applicants to comply with increasingly aggressive monitoring requirements. The Region 9 Board has been requiring more stringent monitoring efforts in recently approved NPDES permits for this reason.

11. *What schedule currently exists at the San Diego Regional Board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the San Diego Regional Board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

The 1998 and 2002 Section 303(d) List of Water Quality Limited Segments include a schedule for developing TMDLs for listed segments. Several TMDLs included in this

schedule have been completed and approved (Chollas Creek/Diazinon; Rainbow Creek/Nitrogen/Phosphorus; Shelter Island/Copper), and several others are nearing completion at this time (Chollas Creek/Copper/Lead/Zinc – adopted by Regional Board 6/05 but remanded back by State Board for recirculation 5/06; and San Diego Bay Shoreline/Copper/Mercury/Zinc/PAHs/PCBs – draft CAO circulated and draft Techinical Report in preparation).

I do support efforts to increase the effectiveness and efficiency of the San Diego region's TMDL program. Several elements of the strategy being implemented in Region 9 include using effective TMDL documents developed by other Regions, increasing efficiency by developing watershed TMDLs for all listed segments in a water body in single projects, improving project management through training and implementation of a project management initiative, and using stakeholder advisory groups for increased technical oversight and early identification of problem areas.

12. What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

Again, during my tenure thus far on the Regional Board, we have adopted multiple TMDLs, many of which have been in progress for the last several years, and we have many more on the schedule for adoption during the next several years. While there are additional water bodies within the region listed as impaired and on the 303(d) list, most of these are scheduled for TMDL adoption/implementation at some point, and I support the continued focus by Board staff on the development of these remaining TMDLs. Due to the complexity of creating a TMDL and the associated Regional Board staff time required to carry it through to the point of adoption by the Board, budget and staffing constraints are likely the primary reason for the delay thus far.

The question of whether other agencies have a role in implementing specific load allocations identified in a TMDL really depends on the pollutant load one is attempting to reduce. In many cases, the local agency holding the MS4 permit (the storm water NPDES permit) will likely be involved and be responsible through its permit requirements to meet the water quality objectives. It is through the water quality monitoring requirements placed on the permittee that compliance will be ensured.

13. What is the extent of sewage overflows in the San Diego region? Have the number or size of sewage overflows increased or decreased in the last several years? What are the causes of these sewage overflows?

The prohibition of sewage overflows was enacted back in 1996 when the Board adopted Order No. 96-04 that prohibited sewage spills and required all sewer agencies to report sewage spills to the Board. Since 1996 the Board has aggressively issued ACLs for spills that resulted from negligence or intentional acts with the result that spills have decreased significantly. For the past several years the Executive Officer Reports have included reports on sewer overflows together with a table of spill data. From the time Order No.

96-04 was adopted to FY 04-05, the number of sewage spills reported within the San Diego Region decreased from nearly 800 to less than 300. The causes of a majority of sewer spills continue to be related to aging infrastructure (broken/cracked lines, pump failures, and line blockages caused by roots/grease). That said, sewage spills continue to be a primary concern within the Region, and local agencies and the Board must be diligent if full compliance (i.e. no sewer spills) is to be achieved in the future.

14. Has the board acted to address sewage overflows? If so, when and how?

Yes. In recent years the Regional Board has been increasingly aggressive and increasingly effective in both reducing the number of spills and the response time required to address the cause of the spill and the clean up. These major spills (such as those occurring in the City of San Diego) have been taken very seriously and significant ACL (Administrative Civil Liability) Complaints issued as a result. Other municipalities have reacted to this type of action by more diligently monitoring and investing in their own sewer systems, something that I have certainly advocated in my own city.

15. What authority does the Board have to address obsolete fuel storage tanks on federal property? Does the Board have to wait until the pollution migrates off federal property before it can act?

The Porter Cologne Water Quality Control Act gives the Regional Board broad authority to require any person who discharges a waste to waters of the state to cleanup and abate the affects of their discharge, and no, the Board does not have to wait until the pollution migrates off federal property before it can act. Additionally, Cal. Code of Regs. Title 23, Division 3, Chapter 16 (UST Regulations) outlines the regulations the Regional Board enforces for regulatory oversight of underground storage tanks. The State Water Board's Cleanup Policy, Reso. No. 92-49 outlines the process by which a discharger shall follow to investigate and cleanup their discharge of waste. In the case of the Navy's Point Loma Fuel Farm, the Navy has agreed to work with the Regional Board on investigation and cleanup of environmental releases as part of a contractual agreement -- the Navy Environmental Restoration Agreement.

16. When did the Board learn of the leak at the Point Loma Fuel Farm?

The Regional Board staff became aware that the previously identified plume was approaching the boundary of the fuel farm on October 5, 2005. At that time, the Navy had already conducted substantial site assessment work to determine the cause of the release. Tank 43 was suspected to have leaked in March 2001. Site assessment activities began in March 2001 under the oversight of the County of San Diego, Department of Environmental Health. Fuel product was discovered in the soil and ground water surrounding Tank 43. A total fluids extraction system was installed in April 2001 and has been in operation ever since. After further site assessment work the Navy was able to confirm that it was, in fact, Tank 43 that leaked in October 2001.

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The Regional Board became lead Regulatory Agency over the releases at the Fuel Farm in April 2004. Since the Regional Board began regulating the tanks at the Fuel Farm, the Navy has conducted additional site assessment work to evaluate the lateral and vertical extent of the fuel plume. Currently, the Navy is installing monitoring wells on private property just north of the federal property to define the leading edge of the plume. At this time, the total fluids extraction system is providing sufficient hydraulic control on the plume such that the plume is not migrating towards San Diego Bay.

17. What steps has the Board taken to address the underground fuel leak? When were these steps implemented? Can the underground fuel leak be stabilized and then cleaned up?

Since April 2004 the Regional Board has provided oversight of the investigations and assessment by reviewing and commenting on the Navy's site assessment work plans and other technical reports to fully define the plume. The Regional Board required the Navy to extend their site assessment activities beyond the federal property line to investigate the extent of the leading edge of the plume as well as conduct soil vapor monitoring both on and off of federal property. The Regional Board has also spent significant time communicating to the public, and both local and federal elected officials regarding the issue, and the State's Geotracker Website for this release and others located at the Fleet Industrial Supply Center Fuel Farm has been updated by Board staff in order to increase the public's ability to obtain updated technical information about the plume.

Yes, the underground fuel leak can be stabilized and cleaned up. The total fluids extraction system hydraulically controls the movement of fuel and ground water to the extent that it acts as a barrier to further migration of fuel towards San Diego Bay. This system is effective in halting further migration to the bay and the plume appears to be stable at this time. In September of this year, the Navy plans to submit their Feasibility Study and propose appropriate cleanup action.

San Diego Regional Water Quality Control Board

1. What do you hope to accomplish during your tenure as a member of the San Diego Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?

I hope to accomplish many things during my second four-year term on the San Diego Regional Water Quality Control Board (Regional Board), foremost of which are the following:

a) Reissue the municipal stormwater permits for western San Diego County, southern Riverside County, and southern Orange County, with emphasis on watershed approaches in addressing water

b) Adopt and implement the San Diego Bay Sediment Clean-up Program

c) Continue to develop and implement TMDL's for the high priority polluted waterbodies in the region

d) Continue efforts to address water pollution in the Tijuana River Watershed

One of the principal goals I have for the board is to enhance the level of knowledge of board members through increased training opportunities, conference participations, and greater activity on the part of the board's committees. I hope to achieve this goal by encouraging fellow board members that a knowledgeable, active board is essential for solving the region's water quality problems.

2. Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?

State board and regional board staff are exceptionally knowledgeable about the water quality issues that we must address. They are very responsive in answering my questions. Since the time between our monthly meetings is considerable, it would be helpful for the purpose of creating a more informed board if staff offered additional technical workshops for the board.

3. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

I received training on conflict of interest matters from legal staff assigned to the regional board when I was first appointed to the board more than four years ago.

Additionally, conflict of interest training is typically offered by legal staff at the statewide Water Quality Coordinating Committee (WQCC) meetings, most of which I have attended during my tenure on the board. I will withdraw myself from voting on an issue if I believe that I am unable to render an objective decision or if I have a financial interest in the Project. When in doubt about a possible conflict of interest I always check with legal staff to determine if I have a conflict of interest and should refuse myself from hearing the matter. To date, it has not been necessary to refuse myself from hearing and voting on a matter before the board.

4. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocation that you think would benefit from increased transparency?

Currently, the relationship between the state board and the regional board is excellent. The efforts of the two boards are well coordinated through the participation by state legal counsel at our meetings attendance by a member of the state board at our meetings, joint meetings of the regional board chairs, joint meetings of the regional board's executive officers, and annual joint meetings of the regional boards and the state board (WQCC). Coordination could perhaps be improved if there were more frequent joint meetings of the regional boards and the state board. I am not aware of how the budget allocation process works; consequently, I am unable to make recommendations for improvement.

5. Do you believe the San Diego regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?

I believe the regional board is not adequately funded to enforce the state and federal laws we are charged with enforcing. Currently, the regional board is underfunded by a large number of positions. For example, the United States-Mexico border water quality coordinating position, an exceptionally important position for Region 9, has been unfunded for three years. As another example, regional board staff, through a process involving stakeholders, identified 62 items costing eight million dollars in conjunction with the 2004 Basin Plan Triennial Review of the Water Quality Control Plan for the San Diego Region. As a result of limited funds, the board was only able to fund the top seven priorities, amounting to less than one million dollars.

I believe we are legally required to establish TMDL's for receiving waters. We are funded for development of TMDLs, but not for the implementation. Implementation includes modifying discharge permits and overseeing the implementing actions. Lacking a dedicated funding source the implementation is currently piggy-backed onto existing regulatory programs-mainly permitting at this time. Over time either the existing

regulatory programs, the TMDL implementation or both will show declining performance as a result of this added workload.

6. What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?

The goal, of course is to obtain clean water. The desired results can be achieved using a combination of methods, including BMPs and numeric limits. Ultimately numeric limits should be employed wherever and whenever feasible in order to make permits more easily enforceable and transparent. However, during the transition to greater use of numeric limits, BMP's serve a useful purpose in that their use provides us with information about which practices work well and which ones do not in obtaining clean water.

7. Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?

While there are no guarantees, the use of numeric limits in stormwater permits should logically lead to better water quality than permits that rely solely on BMPs. However, as indicted in the response to question #7, during the transition to greater use of numeric limits in permits, it is necessary to employ BMP's when and where their use offers an effective solution to problems of polluted waters. And, of course, source control is ultimately the most effective means of pollution control.

8. In what specific ways might your regional board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Current funding is inadequate to support staffing levels needed to optimally enforce water quality laws. Consequently, it has been necessary to set priorities, enforcing only the most egregious violations. With additional staffing, it would be possible to: a) review CEQA documents associated with development projects that might have water quality impacts, b) expand the number of violations prosecuted, and c) devote more staff to outreach with stakeholders to identify potential water quality problems early on to arrive at collaborative solutions before the pollution becomes more difficult and expensive to abate. Our board monitors staff's enforcement practices largely through discussion during each board meeting of the executive director's extensive written and oral reports.

9. What enforcement options do you believe provides the most effective tools for violations of board orders?

The Regional Board has a variety of enforcement tools available. These include Cease and Desist Order, Cleanup and Abatement Order, Time Schedule Order, order requiring

submission of technical reports pursuant to California Water Code Section 13267, administrative imposition of monetary penalties (ACLs), referrals for judicial enforcement and Notice of Violation. Imposition of monetary penalties (ACLs) has been particularly effective. We have also gotten a lot of mileage from Notice of Violations (NOVs) which are issued when a violation is first detected. About 90% of our total enforcement actions are NOVs. The Board has been very consistent in issuing ACLs when there has been no response or inadequate response to NOVs. Most discharges exert significant effort towards correcting violations when noticed by a NOV – motivated by the looming threat of an ACL if the violation is not corrected.

10. What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?

Numerous monitoring activities are mandated by the regional board and conducted by outside parties. These include compliance monitoring, intensive surveys, municipal storm water monitoring, and investigation monitoring, which include the Regional Harbor Monitoring Program. All monitoring must be done in accordance with proper quality assurance/quality control. Typically, monitoring performed by outside parties is funded by those responsible for conducting the monitoring, but they may seek state grants to fund all or part of the monitoring. The regional board has provided $100.000 in matching funds for the Regional Harbor Monitoring Program. Two of the biggest challenges facing the regional board are ensuring that all monitoring programs produce comparable data and that a GIS-based data management system be put in place to make water quality data more readily available to staff and the public. The state and regional boards should place higher priority on implementing a well-designed system of monitoring water quality in the watersheds and near coast marine waters of Region 9. Such an approach would ultimately provide a high quality database that would allow the regional board to more accurately characterize water quality conditions in the region and more effectively address water quality problems.

11. What schedule currently exists at the San Diego regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet. What specific steps do you support to get the San Diego regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

The schedule for TMDL development at the regional board consists of actions on Chollas Creek, Rainbow Creek, San Diego Bay Shoreline, and Shelter Island Yacht Basin segments found on the 303(d) lists. For Chollas Creek, the cadmium TMDL is proposed for delisting in 2006 and copper, lead, and zinc TMDL's was adopted by the board on 06/05, but remanded back to the board for recirculation on 05/06. For Rainbow Creek,

the diazinon, nitrogen, and phosphorus TMDL's have been approved by USEPA. For the San Diego Shoreline, a draft technical report on copper, mercury, zinc, PAH's, PCB's TMDL's is in preparation. For Shelter Island Yacht Basin, the copper TMDL has been approved by USEPA. The TMDL Roundtable is developing a program improvement strategy to increase program performance. Several elements of the strategy are being implemented in Region 9, such as using high quality TMDL documents developed by other regions, increasing efficiency by developing watershed TMDL's for all listed segments in a waterbody as a single project, improving project management through training and implementation of a project management initiative, and using stakeholder advisory groups for increased technical oversight and early identification of problem areas.

12. What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

Typically, TMDL's are implemented through application of the State of California Nonpoint Source Implementation and Enforcement Policy for load allocations, and through revisions to NPDES requirements for wasteland requirements.

Agencies involved in TMDL implementation are typically stormwater agencies such as cities, counties, Caltrans, and the U.S. military. These agencies are involved because their urban runoff discharges are regulated through NPDES requirements issued by the regional board. We also work with the San Diego County Farm Bureau when land allocations are assigned to agricultural facilities. Typically, TMDL implementation plans require that dischargers submit progress reports on BMP design, construction, and performance for achieving pollutant load reductions. Effluent and receiving water monitoring programs are another key component of TMDL implementation. Monitoring data are used to measure compliance with load and wasteload allocations, and the response of the receiving water to pollutant load reductions through BMP implementation.

13. What is the extent of sewage overflows in the San Diego region? Have the number or size of sewage overflows increased or decreased in the last several years? What are the causes of these sewage overflows?

Without question, Region 9 has had a poor record of sewage overflows. During the period 2001-2006, approximately 1,600 sewage overflows occurred, an unacceptably large number. On the positive side, there has been a substantial downward trend in the number of spills since 2001, with 445 occurring in 2001-2002 and 185 in the first 10 months of 2005-2006. Most overflow cases are caused by aging infrastructure, poor maintenance, and inadequate supervision of plant operations. With increased attention given to maintenance and replacement of older sewage infrastructure, pressure by public interest groups, and increased enforcement by the regional board, it is

anticipated that the number of spills will continue to decline. It is to be hoped that in the future, sewage spills will be the exception rather than commonplace, as has been the case.

14. Has the board acted to address sewage overflows? If so, when and how?

In 1996 the Board adopted Order No. 96-04 that prohibited sewage spills and required all sewering agencies to report sewage spills to the Board. Since 1996 the Board has aggressively issued ACL's for spills that resulted from negligence or intentional acts with the results that spills have decreased significantly. For the past 5-6 years the Executive Officer Reports have included reports on sewer overflows together with tables of spill data. The State Board recently issued a statewide sewage spill order that will supersede Order No. 96-04. The statewide order is arguably weaker than Order No. 96-04 in that it does not prohibit sewage spills. Nevertheless, we think we can still use it as an effective tool in controlling spills.

15. What authority does the board have to address obsolete fuel storage tanks on federal property? Does the board have to wait until the pollution migrates off federal property before it can act?

The matter of the regional board's authority to address water quality problems on federal property, such as the U.S. Navy's Point Loma Fuel Farm, is an exceptionally important one for Region 9 because of the large number of military installations in the area. While it may be difficult to take enforcement action against the federal government because of the so-called principle of sovereign immunity, it is my opinion that the regional board has authority according to the following:

- The Porter Cologne Water Quality Control Act gives the Regional Board broad authority to require any person who discharges a waste to waters of the state to cleanup and abate the affects of their discharge.
- California Code of Regulations Title 23, Division 3, Chapter 16 (a.k.a. UST Regulations) outlines the regulations the Regional Board enforces for regulatory oversight of underground storage tanks.
- State Water Board's Cleanup Policy, Resolution No. 92-49 (*Policies & Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*), outlines the process by which a discharger shall follow to investigate and cleanup their discharge of waste.
- The Navy has agreed to work with the Regional Board on investigation and cleanup of environmental releases as part of a contractual agreement (Navy Environmental Restoration Agreement).

Thus, the Board is not waiting until the pollution migrates off of the Navy's Point Loma Fuel Farm before it takes action. As another example of the regional boards willingness to take action against the federal government is its decision to pursue compliance

against the International Boundary and Water Commission to meet California's water quality effluent treatment schedule.

16. When did the board learn of the leak at the Point Loma Fuel Farm?

The Regional Board staff became aware of the leak October 5, 2005. At that time, the Navy had already conducted quite a bit of site assessment work to determine the cause of the release. Tank 43 was suspected to have leaked in March 2001. Site assessment activities began in March 2001 under the oversight of the County of San Diego, Department of Environmental Health (DEH). Fuel product was discovered in the Soil and ground water surrounding Tank 43. A total fluids extraction system was installed in April 2001 and has been in operation ever since. After further site assessment work the Navy was able to confirm that it was, in fact, Tank 43 that leaked in October 2001.

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17. What steps has the board taken to address the underground fuel leak? When were these steps implemented? Can the underground fuel leak be stabilized and then cleaned up?

Since April 2004 the Regional Board has provided oversight of the investigations and assessment by reviewing and commenting on the Navy's site assessment work plans and other technical reports to fully define the plume. The Regional Board required the Navy to extend their site assessment activities beyond the federal property line to investigate the extent of the leading edge of the plume as well as conduct soil vapor monitoring both on and off of federal property. The Regional Board has also spent significant time communicating to the public, San Diego City Council members, Representatives of State Congress, and congressional staff regarding this issue. Other staff time has been spent updating the State's Geotracker Website for this release and others located at the Fleet Industrial Supply Center (FISC) Fuel Farm in order to increase the public's ability to obtain updated technical information about the plume.

Yes, the underground fuel leak can be stabilized and cleaned up. The total fluids extraction system hydraulically controls the movement of fuel and ground water to the extent that it acts as a barrier to further migration of fuel towards San Diego Bay. This system is effective in halting further migration to the bay and the plume appears to be stable at this time. In September of this year the Navy plans on submitting their Feasibility Study and propose appropriate cleanup action.

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 21, 2006
4:00 P.M.

547-R

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 21, 2006

4:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

SOPAC McCARTHY MULHOLLAND, Member
California Regional Water Quality Control Board
Central Valley Region

ROBERTA LARSON, Attorney
Representing Mt. House Community Services District

CRAIG JOHNS
Sacramento Regional Sanitation District

ASSEMBLY MEMBER BILL MAZE

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Rural Poverty Water Project
Center on Race, Poverty and the Environment

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Latino Issues Forum

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Committee for a Better Alpaugh

SANDRA MERAZ
Committee for a Better Alpaugh

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Environment California

JIM METROPOLIS
Sierra Club California

LAUREN STROSHANE
Environmental Working Group

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We had fun last week, so we decided do have two Rules Committee hearings this week.

And I apologize for being a little bit late. As you probably saw, we're saying good-bye to a colleague.

We have five Governor's appointees who will be appearing.

Senator Ashburn, would you like to come forward and introduce our first.

SENATOR ASHBURN: Thank you, Mr. President, Senators, Members of the Rules Committee.

This is Sopac McCarthy Mulholland, a person who has famous political names in her name.

CHAIRMAN PERATA: Yes.

SENATOR ASHBURN: She is a nominee for the Regional Water Quality Control Board, and she is extraordinarily well qualified for that position.

Her resume is outstanding. She currently serves as the Executive Director of Sequoia Riverlands Trust. She has been the Interim President of the Economic Development Corporation in Tulare County. She has been with the California Agriculture Education Foundation in Atascadero in San Luis Obispo County.

She has operated her own firm, which has specialized in the business of bringing people together.

I made a couple of calls to friends in Tulare County, and the reviews are rave: Good news; good words in

1 support of Sopac.

2 So, I'm pleased to introduce her and ask for your

3 favorable consideration.

4 CHAIRMAN PERATA: Thank you, Senator.

5 Welcome.

6 MS. MULHOLLAND: Thank you. Good afternoon,

7 Senators.

8 My name is Sopac McCarthy Mulholland, as you

9 stated. I live in a small foothill community called

10 Springville, California. And I have been a permanent resident

11 there since 1992.

12 I grew up in Los Angeles. I'm a fourth

13 generation Californian. I spent a lot of time in L.A. and in

14 the foothills of Malibu.

15 I went to school in Berkeley, and then lived in

16 San Diego for 25 years, where I started my real estate

17 entitlement firm.

18 I have I had a ranch in Springville since 1958,

19 which was really a ranch of love that my father got because I

20 was spending all of my life on another ranch, which I'll tell

21 you about, with a family that was my adopted family.

22 I feel that I am totally qualified for this job,

23 and that I'm able to represent the public. I've spent time in

24 the Central Valley.

25 I've operated my life on the theory that to whom

26 much is given, much is expected. And I think if you look at my

27 resume, you'll see that I have a breadth of voluntary

28 commitments, and I do everything I can to give back, and to walk

the walk.

If you look at my resume, it just sort of is, as Senator Ashburn pointed out, it's pretty diverse. And I think that diversity makes it possible for me to walk in the shoes of a lot of different stakeholders.

I understand real estate development. I understand economic development. I've worked extensively with government agencies and not-for-profits. I've worked with rural communities. I've worked in agriculture, and I've worked on the OSHA Board in public safety.

In the last five years, I've been able to do what I've wanted to do all my life, which is work in the world of conservation. I believe that we have a legacy to turn over to our family and our children, and so I'm following my passion by working with a land trust that is joint ventures with the Nature Conservancy. The Nature Conservancy called me and said, "Here's your dream job. Make this happen." And we've been able to conserve over 11,000 acres, working in concert with private families and family farms, as well as to work with the general public to raise money to preserve waters that will stay clear and fresh out of the Sierras.

I've also been very involved in the Sierra Nevada Conservancy in helping to get that formed. I've worked very hard on the Sierra Cascade Land Trust Council.

I am proud of what I'm doing, and I have really been very fortunate to be able to bring all these walks of life together. Everyone said you can't have a real estate developer on a land trust board; I have two of them, and I'm really proud

of that.

So, I think that when I get together with Caslin and Cook in Bakersfield, and I'm there with the Sierra Club, and we're trying to do something that the developers are telling me is going to leave a better legacy for their future, then I know that we're on the right track.

So, I feel that I can bring consensus. I'm not afraid to speak out. I think we have some very serious water issues here in the state. I absolutely think that enforcement is very, very important, and I think that we have to find in some instances new ways of doing things. And I think that my breadth of knowledge will be able to be helpful in that.

I'd like to take just a minute to discuss the legal issues that have been brought up.

I do have background with water quality. I've been on the Graham Osborn Ditch Company since 1986. I've worked extensively with DWR on a restoration project in the Sacramento Delta, which created 500 acres of property that was turned over to the state for research into water quality.

I've also, as I say, been the ED of this -- the Executive Director of the Land Trust. And in that capacity, I work on watershed and clear waters every day that I go to work.

The second item that came up was my relationship to ag. I live on a ranch. I do not receive any money from working in agriculture. It has been a labor of love, but it is not a working ranch. I have horses, and we have six acres of citrus on the ranch that belongs -- it belonged to my family in partnership with two other families.

One of interesting things for me, which is a sideline, is the fact that it was noted that I'm not Latino. And this is very ironic because my roots to the Latino community probably go back further than most. I was adopted unofficially by a Mexican family that lived in the Malibu mountains. I told you I spent a lot of time there. And when I first went up there, there were three families, and we lived in a two-room house with no indoor plumbing.

This family has taught me the values that I hold dear. So, to be challenged on that issue was really hard, because I think I have walked in their shoes, and watched all five siblings of mine go to college. And I see the things they're doing now, and it brings me great joy.

And I was asked to have them here today, and I just felt that they would be here to support me, but I would want them here as my family, not because they're Mexican.

In terms of the fourth issue, which was representing rural communities, in my business of entitlement work, I've worked on everything from sewer plants to entitlements for low-income housing in the rural communities.

We've we also done a lot of research in terms of how to expedite work in rural communities through the Ag Leadership Program, and as Economic Development Director, Interim President in Tulare County, there are so many rural communities that we needed to work on. That was a high emphasis for us.

And finally, I wanted to address the fact that I recused myself from the irrigated lands issue. I did that under

protest. And I did that in order to be responsive to our staff and to exercise an over abundance of caution.

My family, as I indicated, in a partnership has five acres of citrus. And it was determined that in a 100-year flood, there would be a potential that water could go off of that property into a ditch that is used for drainage, which could at that time go into the river.

I do not feel that that represents a major factor in irrigated land, or that it would in any way effect my ability to look at irrigated land issues.

I recused myself, and the property is in the process of being legally split. I will not have any interest in the orange groves anyway after October of this year.

It's my pleasure to give back, and I am here to answer your questions. And I want to thank you for your consideration.

CHAIRMAN PERATA: Thank you.

Any questions from Members? Senator Bowen.

SENATOR BOWEN: I have questions, but I really prefer to hear from witnesses first.

CHAIRMAN PERATA: Okay.

Those here in support of the nominee, please feel free to come forward.

MS. LARSON: Thank you very much, Mr. Chairman and Members of the Committee.

My name is Roberta Larson. I am an attorney in private practice, and I'm here today on behalf of the Mountain House Community Services District in support of Ms. Mulholland's

appointment.

I know you have a long agenda, so I'll try to be brief. I would just like to say that in the time that Ms. Mulholland has been on the board, we have found her to be an intelligent, capable, well-prepared, and very engaged member of that board.

I would like to speak for just a moment to the recusal issue that has come up, because I think your statute calls for people of various walks of life to be appointed to the board, and that's very important to the makeup of the board. We have people from all different backgrounds. And from time to time, something is going to come up that someone's going to have to recuse him or herself.

For example, the statute requires that the mayor or a city council member be in one of the seats. Well, when that storm water permit, or discharge permit for that city comes up, that member of the board is going to have to recuse him or herself. It doesn't mean that they aren't a capable board member, unable to contribute in many other ways.

Mountain House Community Services District is a community in the Central Valley that is growing. And like many local governments, there are challenges that are faced in complying with increasingly difficult water quality requirements. And we need board members who are thoughtful, fair, and bring a balance to the process of making those very difficult decisions, and understanding a policy role that they bring versus the technical role of their staff and others.

So, we think that Ms. Mulholland is an excellent

1 person to be serving on a regional board, and we ask that you
2 support her appointment and her confirmation.
3 Thank you.
4 CHAIRMAN PERATA: Is Mountain House in San
5 Joaquin, or does it straddle?
6 MS. LARSON: San Joaquin County.
7 CHAIRMAN PERATA: Thank you.
8 MR. JOHNS: Good afternoon, Mr. Chairman and
9 Members of the Committee. My name is Craig Johns. I'm here
10 today on behalf of Sacramento Regional County Sanitation
11 District.
12 Echoing many of the comments that Ms. Larson made
13 previously, Sacramento Regional Sanitation District has followed
14 Ms. Mulholland's very brief but extremely positive career on the
15 Regional Water Board thus far. She has shown herself to be
16 extremely involved, very well prepared, asks extremely good
17 questions, and, in our view, extremely balanced as well.
18 We ask that the Committee affirm her confirmation
19 to the Central Valley Regional Board.
20 CHAIRMAN PERATA: Thank you.
21 Anyone here in opposition?
22 ASSEMBLY MEMBER MAZE: May I testify in support?
23 CHAIRMAN PERATA: Oh, sure. I'm sorry.
24 ASSEMBLY MEMBER MAZE: Thank you, Mr. Chair and
25 Members. I'm Assembly Member Bill Maze of Tulare County, San
26 Joaquin County, San Joaquin Valley.
27 I've known Ms. Mulholland for a number of years.
28 I was the Chair of the County Economic Development Corporation

Board, and she came to work for us. Worked as our Executive Director for nearly year-and-a-half or two-year period of time. Did a tremendous job.

I'm very familiar with the amount of her work in the valley and her personal operations, as well as other activities she's been involved in. I'm quite familiar with the Sequoia Riverlands Trust and the organization that operates there, and the tremendous job that they're doing in providing in that area of California.

I've always found Sopac to be extremely open minded, very rational, takes all points and views into consideration before rendering decisions.

I think she'd make a tremendous appointment to this here board and represent well in the San Joaquin Valley. She'd be my recommendation for that appointment.

Thank you.

CHAIRMAN PERATA: Thank you, sir.

ASSEMBLY MEMBER MAZE: Sorry for my lateness. We just got out of session.

MS. FIRESTONE: My name's Laurel Firestone. I'm an attorney, and I'm the Director of the Rural Poverty Water Project at the Center on Race, Poverty and the Environment in Delano. And I'm a resident of Springville, the same little town in the foothills as Sopac Mulholland, so we're neighbors.

Thank you for the opportunity to testify here today.

I, on behalf of the hundreds of communities that I work with, or that are part of the Environmental Justice

1 Coalition for Water, the AGUA, Asociasion de Gente Unida por el
2 Agua, and clients of the Center on Race, Poverty and the
3 Environment, we strongly oppose the confirmation of Sopac
4 Mulholland because her appointment to the Regional Water Quality
5 Control Board is not in compliance with state law.
6 The California Water Code sets out the structure
7 of the regional water board. It sets out nine seats. Each one
8 is specifically allocated to certain areas of expertise and
9 experience.
10 The Central Valley Water Board, as appointed by
11 the Governor, currently does not conform to the mandates and the
12 structure of the Water Code. Specifically, there are six seats
13 for specific areas of expertise, and most importantly, there are
14 three seats that are supposed to be designated for the public.
15 Two of those public seats are supposed to be represented by
16 someone with particular knowledge in water quality problems.
17 Today the Governor asks you to confirm his
18 appointments in blanket disregard for the structure set out by
19 the Legislature. The Water Code mandates that one seat be
20 filled by a person associated with water supply, conservation,
21 and production.
22 The Governor has already appointed at least two
23 members, Karl E. Longley, an engineer at the Fresno Water
24 Institute at Fresno State, and Alson Brizard, a walnut farmer
25 and Farm Bureau water representative. And in fact, I think
26 Sopac Mulholland would be a wonderful and capable representative
27 under this seat, were it not already occupied.
28 The Water Code also mandates that one seat be

filled by a person associated with irrigated agriculture. The Governor has already appointed three people to the board who are specifically associated with irrigated agriculture. Paul Betancourt is a farmer in Corman. Alson Brizard is a farmer in Patterson. And today, the Governor asks you to confirm yet another representative of irrigated agriculture, Sopac Mulholland, a farmer and rancher in Tulare Country.

Sopac Mulholland may work for the Sequoia Riverlands Trust, but that does not change the fact that she owns and operates three ranches in Tulare County which are regulated by the Regional Water Quality Control Board under its irrigated agriculture program.

Because of her -- as she mentioned, because of her association with irrigated agriculture, and her ownership and operation of these three ranches, she is unable to take part in board's consideration of the irrigated lands conditional waiver program.

The impact of the Governor's appointments is that one area, irrigated agriculture, is disproportionately represented on the Central Valley Regional Board, and the public and those affected by water quality issues are disproportionately underrepresented by the current Central Valley Regional Water Quality Control Board. This is in violation of the mandates of the California Water Code.

By confirming this appointment, you will be taking a seat away that should be occupied by a member of the public that can truly represent the water quality problems that affect millions of the -- millions of people in the Central

1 Valley region.
2 The Central Valley is currently the most -- has
3 the most polluted groundwater in the state, 90 percent of its
4 residents rely on that polluted groundwater. In 2004, nearly
5 40,000 residents had illegal levels of contaminants in their
6 drinking water.
7 Without the expertise and experience of water
8 quality problems in the region on the regional board, this
9 pattern of contamination will only continue to worsen.
10 Furthermore, the Governor has made no attempt to
11 ensure that the regional water board is representative of the
12 communities that it serves, although the Government Code
13 requires it to do so. Over a third of the Central Valley is
14 Latino, and close to a quarter is under the poverty level.
15 However, the Governor's failed to make any reasonable attempt to
16 ensure -- to appoint members that are representative of the
17 region's demographics. And without any attempt to ensure
18 diversity on the board, the Governor has blatantly ignored the
19 civil rights requirements of Government Code 11135 and its
20 implementing regulations.
21 A vote to confirm Sopac Mulholland today would
22 only confirm the Governor's disregard for the mandates of state
23 law and ensure that underrepresented communities will continue
24 not to have a voice on the board.
25 On behalf of the hundreds of low-income
26 communities and communities of color throughout the Central
27 Valley region who are affected daily by water quality problems,
28 we strongly request that you vote not to confirm Sopac

Mulholland.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. DE ANDE: Good afternoon. My name is Susana De Ande. I am here representing Asociasion de Gente Unida por el Agua, or in English, Association of People United for Water, a grassroots coalition based in Tulare County who is comprised of communities who are directly impacted by groundwater pollution.

I'm here to voice -- I'm here today to voice our coalition's strong opposition to the continued lack of representation of these communities on -- of these communities from the Central Valley on the Central Valley Regional Water Quality Control Board.

Over 90 percent of the communities in the Central Valley rely on the state's most polluted groundwater as a source of drinking water. With this said, thousands and thousands of Valley residents cannot fill up a glass of water from their tap without the fear of getting sick. Worse yet, these residents are going to continue to have no choice but to drink this water if the board continues to represent them.

The regional water board's responsibilities and duties is not only to regulate pollution, to enforce clean water laws, and to protect and respect both our surface and groundwater, but to also be an agency that truly represents the vast geographic area that it covers.

With this said, today confirming to appoint Sopac Mulholland, a ranch owner, a discharger, on a public seat is not

only illegal, but will continue to make the regional board unable to fulfill its responsibilities and neglect to represent those they serve.

Again, we request that you not confirm Sopac Mulholland. Thank you.

CHAIRMAN PERATA: Thank you.

Yes, ma'am.

MS. MENDOZA: Buenas tardes. Mi nombre es Veronica Mendoza, y estoy para la Asociasion de Vecinos Unidos de las comunidades en Tulare County.

MS. DE ANDE: I'm going to translate for her. Good afternoon. My name is Veronica Mendoza. I come with Vecinos Unidos from Tulare County.

MS. MENDOZA [THROUGH TRANSLATOR]: I'm here to ask you that you do not appoint Sopac on a seat if she is representing a rancher. That tells me that she's not involved and does not know water quality problems, because in our community we depend on groundwater.

And my understanding is that the big source of water pollution is from nitrate, and she understands that that comes from fertilizer used in ag. fields. That's why I'm here today, to tell you that we need someone on that seat who has nothing to do with ag. fields.

I don't think this has anything to with culture. I have no problem with what race you are. This is a thing with being able to qualify for the seat, to do your job right.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. DAVIS: Hi. My name is Debbie Davis, and I am with the Environmental Justice Coalition for Water. We're a statewide coalition of more than 60 organizations across the state.

And we submitted a letter asking you not to confirm the appointment of Ms. Mulholland, and that letter was also signed by 15 environmental and environmental justice groups.

Basically what we're asking you to do is to recognize that there are community expertise that are not represented on the board. This is not really reflective on Ms. Mulholland at all. This is really reflective of the fact that our regional water boards across the state do not value and do not represent the interests of community members. And community members are the ones who are in -- you know, on the ground, drinking the water.

And it's evidenced in the fact that at the regional board level in the Central Valley, something like groundwater, which, as one of my colleagues said, is consumed by about 90 percent of the residents who are not represented in a key decision.

And so, we're asking you to please take that into consideration when you make this decision. And so, we ask you respectfully not to confirm Ms. Mulholland.

CHAIRMAN PERATA: Thank you.

MS. CAMORODA: Good afternoon. My name is Stephanie Camoroda, and I'm with the Latino Issues Forum. We're a statewide public policy and advocacy organization.

I live in Fresno, California. I came up today in car pool with people from Tulare, Cutler, Alpaugh, Fresno. We came in a van just to participate in this today, so thank you for your time.

I just wanted to ask -- I wanted to say that we oppose the confirmation of Ms. Mulholland because we don't feel like she will represent most of the rural residents in the Valley. Like was stated before, a third of the Valley is Latino, and a quarter lives in poverty. And we're also the fastest reproducing group.

And currently there's no representation for us on the board. And until someone is appointed to represent us, we're going to see the same problems over and over. And our water will continue to be the most contaminated in the state.

So, I strongly urge that we could start taking steps to change this, and a first step would be not -- by not confirming Sopac Mulholland, and appointing someone who will actually represent the tens of thousands of rural farm working residents of the Valley.

Thank you.

MR. MARTINEZ [THROUGH TRANSLATOR]: Good afternoon. My name is Braulio Martinez.

I have been a worker for 30 years here in the United States. I am a father of a family of nine. And I am one of those people affected by groundwater pollution. I come from Alpaugh, California.

I have lived in Alpaugh for 18 years. The last seven years, we've been struggling with water problems. We pay

a water bill of $55 for water that we cannot use, so then we have to buy six gallons of water a week.

I also come to tell you here to help regulate pesticides and avoid workers getting sick and having to go to the doctor and have that expense.

Thank you for your time.

CHAIRMAN PERATA: Thank you.

MS. MERAZ: Hi. My name is Sandra Meraz, and I come Alpaugh, California, 47 years a resident of that city, to me town.

I'm here not to dispute the qualifications of Ms. Mulholland. I'm sure she has a lot of good qualifications. And I'm not with the race issue either.

What I came here for is because when I happened to be able to come, and I'm the driver for 600 miles, at the regional office in Rancho Cordova, I thank you very much that you don't have the three sheriffs and all these people, Highway Patrolmen, trying to take care of us not coming in. They thought we were going to be a riot. We weren't.

My concern is that when I came those many miles, number one, they gave me a minute, representing 800 people, and about 15 seconds to speak.

And I was very disappointed because on the issue of having to recuse yourself off a board, I'm also a board member on a water board, and it's very hard to represent those communities if you have a voice, like I'm listening to with a young lady here, about how she understands. Well, her voice wasn't there, so where does that leave us? So, where does that

leave our communities if there's nobody to listen and feel, and try to tell the others that are sitting here, because we are human beings. We all have an issue of some kind.

And yes, Alpaugh had an arsenic problem which everybody says, well, that's not the issue, but it is in this way. We had a cost of eight years. We had no water for two years and eight months. We are the model of not having good water, and that's over with. That's natural groundwater. That's natural resource, whatever you want to call it.

But the nitrates are coming in, and we're going to go through another expense. If the waters from the regional board gives like they did ag. waivers, things are not being monitored.

We are the people that can tell them. Tell you. We are the people that can tell you. We need you to listen to what's going on. Someone needs to be listening. Someone needs to be in the field. Someone needs to be listening really hard.

We shouldn't have to be driving all these miles. We shouldn't have to be faced and challenged with Highway Patrols. We shouldn't go through all of this. This is America. We're American people. We're human beings. We're the human race.

Where is that compassion of putting someone that doesn't have to recuse themselves at all for whatever reasons, not just Ms. Mulholland, but others and others?

And all I ask is for you to listen. I'm not in support of nominating or appointing this position to Ms. Mulholland. That I hope that you can find someone that we

have a lot that we can tell you that should be on there, that works with the communities, is very qualified, and can help the regional board go in the direction they're supposed to be.

They make studies, and they really don't know what the study's all about. And that was proven at that meeting.

That's a lot of miles. With this one, it'll be another 600; that's 1200 miles for somebody to please listen to these communities.

Thank you.

CHAIRMAN PERATA: Thank you.

Yes, sir.

MR. FERNANDEZ: Thank you for allowing me to testify today. My name is Eriberto Fernandez, and I come from Delano. I am here representing Asociasion de Gente Unida por el Agua, along with CRP, the Center on Race, Poverty and the Environment.

I, along with many of the folks behind me -- and many folks in the communities weren't able to drive 600 miles from Delano to here -- have strong -- are really opposed to nominating Ms. Mulholland for the board because, well, I'm here to voice and give voice to communities of the communities who are largely unrepresented, largely and mercilessly forgotten, often overlooked, and politically and economically disadvantaged and neglected.

We are here today because we are extremely opposed to the confirmation of Sopac Mulholland. For many years now and all throughout the state, and for a very long time, a

large number of our communities in the San Joaquin Valley have been and still are unrepresented by the servants. They are political servants. Many of these so-called representatives are -- these people don't genuinely and don't full heartedly fight for the rights of their constituents. Their concerns aren't heard, or they aren't taken into account, and their problems aren't fixed.

Like today. Today, we have many water issues in Alpaugh, in Allensworth, geez, in east Orosi. All of these problems can and should be dealt with by the regional water board, and they're not. No one's doing anything about it because there's no adequate or true representation of the people.

So, by appointing Sopac Mulholland today, a rancher and a farm owner, we are not only taking away the opportunity for these communities to thrive healthwise and give them adequate water needs or water, but we're also taking away the ability for these -- we're also taking away the very values of democracy, you know, this country was built upon, and this state, and the very values that allowed us to hold this meeting today. I mean, if democracy is working, it is certainly not shown in the San Joaquin Valley, or throughout the state, or even the nation.

Please do the right thing and appoint someone who adequately represents these people, and myself, my family. Thank you.

CHAIRMAN PERATA: Thank you.

MS. GUZMAN: Good afternoon. My name is Martha

Guzman. I'm with the California Rural Legal Assistance Foundation.

I could also vouch for the compassion of Soapy Mulholland, because I was a beneficiary of her compassion during the Ag Leadership Program. So, just to be clear, this is not about Soapy's person, or her values, or even her history. It's about a vote count.

And possibly this Committee knows the most important value of having a vote, one vote. There are already two other farmers on this board. Having a conflict of interest as a public member on this seat prevents a public voice. That's all this is about. It's about having a vote on that board for issues related to irrigated ag, or even ranch land, which will possibly be another issue coming up.

It's something that is not -- you know, other members may have to recuse themselves. There's an irrigated ag seat. There's a water supply seat. There's an industrial use seat, which will likely go to some sort of value-add ag sector. That voice is represented and is able to vote on these decisions.

We need a community voice that has the right to vote on these issues. It's that simple. We need somebody who can vote.

Unfortunately, we have to oppose this confirmation.

MR. GUERRERO: Good afternoon. My name is Rene Guerrero with the Planning and Conservation League.

Ms. Guzman took a lot of my points. But there's

1 no doubt that Ms. Mulholland is capable and has the capacity.
2 Unfortunately, those capacities are already represented on the
3 board.
4 We would like to see representation from those
5 communities in the Central Valley that are impacted everyday by
6 bad quality of water and bad governance.
7 So, unfortunately we oppose Ms. Mulholland's
8 nomination and urge you to find a good representative for the
9 Central Valley for the board.
10 Thank you.
11 SENATOR CEDILLO: So, she's compassionate. She's
12 competent. She's capable.
13 So, the argument is that she's excluded, and then
14 she's a public member. And so the foundation for the argument
15 is?
16 And then my other question is, how do we cure
17 it?
18 We're having the same problem with the Governor
19 on the Parole appointments, where the design of the board is
20 designed to have balanced diversity, reflect certain populations
21 that have an interest.
22 Having an interest in the subject matter isn't
23 necessarily a conflict that recuses you. So on the Parole
24 Board, you know, from the Doris Tate Victims, that's fine;
25 people from law enforcement are fine. But it can't be
26 exclusively.
27 So the question here is, and then I'll ask
28 Ms. Mulholland also, is it the circumstance that she has to

1 recuse herself in some instances, but the design of the board
2 has people who have, quote, that "inherent" conflict. So, I'm
3 not quite sure that that in itself --
4 MS. GUZMAN: No, in fact, the irrigated ag seat
5 and the water supply, who are more farmers than Ms. Mulholland,
6 did not have to recuse themselves.
7 SENATOR CEDILLO: Why did she have to recuse
8 herself? Why is that a conflict?
9 MS. GUZMAN: Well, she was not able to vote.
10 Whether or not we believe on the legal grounds, that's really a
11 separate conversation that we'd like to engage in.
12 But the fact is that she was not available to
13 vote.
14 SENATOR CEDILLO: This is from my advice from
15 counsel? The counsel on the board?
16 MS. GUZMAN: That's right.
17 SENATOR CEDILLO: Let me ask you this other
18 question.
19 How do we cure this? Is the Governor not getting
20 appointments that reflect the breadth and depth of the interests
21 in the field? How do we cure this?
22 This is a problem we're having with the Parole
23 Board.
24 MS. GUZMAN: There certainly will be two seats --
25 there's three seats, one vacancy and two seats that will come up
26 next month, late month next month, that the Governor will have
27 an opportunity to make better appointments that would not put
28 this kind of, you know, conflict even to exist, so that we can

have members appointed that have compassion and qualities that are in the correct seats, and hopefully we'll have further members represented that have the demographic representation of the Valley.

SENATOR CEDILLO: Okay.

CHAIRMAN PERATA: Do we have the lawyer?

Maybe you can talk to the question of the appropriateness of the position that she's filling.

SENATOR CEDILLO: Also, I know a couple times witnesses made reference to the law states.

Are we struggling with vagueness here? Are we struggling with lack of specificity in terms of what the law says? Tell us what the law says.

MR. LAUFFER: Gladly, Senator Cedillo. My name Michael Lauffer. I'm Chief Counsel for the State Water Resources Control Board.

Ms. Firestone gave you a brief introduction to how Water Code Section 13201 operates. This is the section that creates six specific categories for regional water board appointees.

And then there are three positions that you've heard people refer to today as the public positions. I tend to refer to them as the unaffiliated positions, or unspecified positions.

What the Water Code says, and I think Senator Cedillo to a certain extent gets to the core of the issue here, there is ambiguity in this particular code section. And for 35 years, my office has consistently interpreted the language that

1 says that the three positions shall be available for persons not
2 specifically associated with any of the foregoing categories --
3 in other words, those six enumerated categories -- to mean that
4 those three positions are available for people who need not have
5 this specific affiliations set forth.
6 Now, in contrast, there are other boards
7 throughout the state, boards and commissions, who have reserved
8 public positions. And the Legislature has provided very clear
9 language in that regard. The State Bar would be an example I'm
10 familiar with. There are six public positions on there. And
11 what the Legislature has said is that there shall be six members
12 of the public who are not members of the bar, and have not ever
13 been members of the bar of any state in the United States. And
14 so, the Legislature's been very clear about those kinds of
15 positions.
16 With respect to Water Code Section 13201, and
17 these three unspecified positions, there are a lot of problems
18 both textually, if you try to construe these as requiring that
19 board members not have any relationship at all, any association
20 at all with the six enumerated categories. And I think
21 Ms. Mulholland is a good example of this. People don't fit
22 conveniently into one box.
23 You've heard people refer to her as a discharger
24 from her irrigated agricultural lands, lands that she says she's
25 going to be selling later this fall anyway. But you've also
26 heard that she's on the Sequoia Riverlands Trust.
27 One of the positions, and it's one of the reasons
28 why the water board has -- Office of Chief Counsel has looked at

1 Water Code Section 13201, and said that it should be construed
2 as a board member need not have a specific affiliation, as
3 opposed to precluding them from having one of these enumerated
4 affiliations, is because if that were the case, these public
5 positions would no longer be available for board members who
6 have an affiliation with a fish, wildlife, environmental
7 nongovernmental organization because there is a board slot
8 specifically reserved for fish and wildlife.
9 Ms. Mulholland could conceivably be precluded for
10 that reason, but board members who hold these unspecified spots
11 throughout the state are members of organizations like the
12 Sierra Club. There are two other board members on this board
13 who have affiliations. They're members of or active
14 participants in nongovernmental organizations dedicated to
15 protecting the environment. And if you were to construe --
16 SENATOR CEDILLO: I understand what you're
17 saying.
18 Are there seats designed for those types of NGOs
19 and people who are affiliated with them? Is there like an
20 environmental --
21 MR. LAUFFER: There is one specific seat that is
22 for a responsible nongovernmental organization associated with
23 recreation, fish, and wildlife. Well, that's pretty much any
24 environmental nongovernmental organization.
25 SENATOR CEDILLO: Then the other three, most of
26 the reading over the years has been that then other three are
27 not limited to.
28 MR. LAUFFER: Correct. They're not limited.

They need not be associated with any of those six enumerated categories. They can have some affiliations.

And in Ms. Mulholland's case, I mean, the question becomes, I mean, her primary work, her employment, if you will, is with the Sierra Riverlands Trust -- or Sequoia Riverlands Trust.

And when you try to figure out what somebody's association with, because the legislation is crafted in such a way that it is an association, it's a very broad term. We've looked at membership as being an association.

So, boards with -- I mean, we already have a very difficult time with appointments to these boards. I think this Committee is very familiar with it. There are specific categories; there are conflicts rules under the Federal Clean Water Act.

And to construe the "not otherwise associated with" language, or "not specifically associated with" language, to be a prohibitory clause would greatly complicate the ability, I think, of the Governor and this Committee to get qualified candidates on these boards.

CHAIRMAN PERATA: I'd like to say that was helpful.

[Laughter.]

SENATOR ASHBURN: You did ask counsel.

SENATOR BATTIN: Your point, to try to condense it, is that the standard of which the opponents are making would also prohibit more than likely the people who they would support, like the Environmental Justice's group, because you

1 already have one position that's got that slotted. So
2 therefore, anybody under that standard, anybody involved in any
3 environmental organization would be prohibited from being on the
4 board.
5 MR. LAUFFER: That is one consequence of that
6 reading.
7 And in short answer to Senator Perata's question,
8 it basically comes down to, the text doesn't require the result
9 that Ms. Firestone and others are putting forward today.
10 We believe if you were to construe it that way,
11 it would create this problem for appointments that would have
12 backlash all the way across the appointing categories.
13 And in addition, there is a savings clause,
14 Subdivision D in Water Code 13201 that's designed to fix those
15 situations where we have conflicts.
16 And if you were to construe the section we're
17 talking about, the subdivision we're talking about, it would
18 effectively mean that nobody could ever be appointed to a water
19 board through the savings clause because it uses the same
20 language, "not specifically associated with any category on the
21 board," and that would presumably mean even the public
22 category.
23 So, there are many reasons why we think textually
24 the Governor's appointment of Ms. Mulholland is appropriate.
25 Because she may have an affiliation with irrigated agriculture
26 should not preclude her from having one of these three
27 unspecified spots.
28 And if you were to adopt this construction of the

1 Water Code, it would create huge problems with real consequences
2 for any board member who has any kind of nongovernmental water
3 quality affiliation.
4 SENATOR BATTIN: With that language, I don't know
5 if you know the answer to this question, but when that language
6 was put into Code, was that just boilerplate language that was
7 taken out of other appointments?
8 MR. LAUFFER: No. It's very interesting, Senator
9 Battin, because this language appears no place else in the
10 California Codes. When public members are on other boards,
11 there's very clear language about they cannot have the
12 affiliation.
13 This language does not say "shall not be"
14 associated with the other six categories. It's language that is
15 unique to Porter-Cologne, and it's been around since the dawn of
16 Porter-Cologne.
17 We've consistently construed it in my office for
18 35 years, since Porter-Cologne became law, as I have described
19 today, that it does not prohibit board members holding those
20 three open slots from having the affiliation. It just ensures
21 that you can appoint three board members who may or may not have
22 these affiliations.
23 SENATOR ASHBURN: If I may, can I pick up on this
24 line of questioning?
25 I find it very curious that the argument is that
26 Ms. Mulholland should be disallowed from this appointment
27 because she is not a public member, that somehow she is tainted
28 from objectivity because her family happens to have owned a

1 ranch.

2 And yet, there's also the argument advanced that,
3 well, she had to recuse herself. These same folks wanted her
4 recused. They did not want her to participate for fear that she
5 already had a predetermined notion of the outcome of the issue.

6 So, I guess my first observation is that you
7 can't have it both ways.

8 For Counsel, was the representative specifically
9 designated for irrigated agriculture, was he required to recuse
10 himself on the vote for the exclusion of ag. lands?

11 MR. LAUFFER: That particular board member, and I
12 believe we're referring to Mr. Betancourt, and I'll be honest.
13 I don't typically advise this board.

14 My understanding is, Mr. Betancourt, after an
15 investigation by the regional board staff, was permitted to
16 participate. And the simple reason was because he does not have
17 -- the waiver that we're talking about today involves discharges
18 to surface water. They investigated Mr. Betancourt's property
19 and determined he did not actually discharge to surface water,
20 so the particular conditional waiver that was before the board
21 didn't regulate him. So, there was no reason for him to recuse
22 himself.

23 SENATOR ASHBURN: That is such an absurdity. And
24 I respect the fact that you did not render the opinion, but to
25 have disallowed under protest, Ms. Mulholland has testified that
26 she protested that she was going to be disallowed from
27 participating because in some bizarre scenario that some
28 attorney cooked up in 100-year event, there may have been a

1 trickle or two that may have eventually made it down to surface
2 water, but that a farmer similarly situated, who sits in the
3 farmer position, irrigated agriculture slot, was allowed to
4 participate in this, is absurd in the context of the recusal
5 that was necessary in this case.
6 This is the most bizarre interpretation ever.
7 The counsel to this board is the one who ought to
8 be before us, explaining their behavior.
9 SENATOR CEDILLO: How about the drafter of the
10 ordinance?
11 MR. LAUFFER: If I may, Senator Ashburn, there
12 are times, and in this case, as I indicated, the regional board
13 staff looked at this issue very carefully. I mean, you need to
14 draw lines.
15 And the results may not always be intuitive, but
16 if an individual's property doesn't actually discharge, and it
17 would not be subject to the conditional waiver, that's the end
18 of the story.
19 I mean, the conflict provisions under the Water
20 Code are actually far broader than most of the Political Reform
21 Act conflict provisions.
22 And the water board's attorneys, and I stand by
23 their decisions, have to go through and analyze, given the
24 specific facts. And in this case they did a great degree of due
25 diligence, because this is a particularly sensitive issue. And
26 during their due diligence, it was determined that there would
27 be a discharge from Ms. Mulholland's property under the waiver
28 as it was fashioned, and there would not be for

1 Mr. Betancourt's.

2 And that's a classic case of standing back

3 dispassionately, looking at the facts, and rendering a legal

4 conclusion.

5 SENATOR ASHBURN: This is just out of curiosity,

6 what if Ms. Mulholland had selected to participate? Would she

7 have the right as a member of this board to have chosen,

8 weighing the advice of counsel to the board, to have said, "No,

9 I don't have such a conflict, and I'm going to participate."

10 MR. LAUFFER: Well, fortunately, most of these

11 things tend to be worked out. And ultimately that's -- like any

12 board, a chair oversees the particular proceedings and is

13 prepared to entertain motions, or receive advice from counsel,

14 and, if necessary, from interested stakeholders, to render an

15 opinion.

16 SENATOR ASHBURN: She's an independently

17 functioning member of the boards. A ruling of the chair would

18 not disallow her vote. A vote of the board to disallow her vote

19 would not disallow her participation.

20 SENATOR CEDILLO: On the conflict rules, you may

21 taint the entire vote process.

22 SENATOR ASHBURN: But it would have to be

23 challenged in court in order to disallow it.

24 MS. MULHOLLAND: I think that my decision --

25 SENATOR CEDILLO: It undermines the entire vote.

26 She may be able to vote --

27 SENATOR ASHBURN: Only if the outcome were

28 challenged.

MS. MULHOLLAND: My decision not to vote was actually based on the understanding that I could be opening the board up to outside legal challenge if I had voted, and that then the entire decision of the whole board would be affected because, if I was deemed to have voted when I shouldn't have, it would have delayed -- it would undo everything that was done.

And so, it was it was for consideration of that reason that I did it under protest and asked for a further review of the subject. But not -- I was happy to do it that day because of the consequences that could have hit the whole board.

CHAIRMAN PERATA: This has been going on for a long -- not this. This has been going on forever -- but this issue. And we've had staff working on it, and it's very hard to reach consensus.

I think as we get through this, it seems to me it would be more productive to look at some of the others. We have three positions, one vacant and two opening next month, and prevailing upon the Governor to appropriately -- I don't know why I'm looking at you; you don't work for the Governor; do you?

MR. LAUFFER: No, sir.

CHAIRMAN PERATA: So, I think it might be more productive to make sure that, as we've been trying with the Parole Board, that members of the community who are truly reflective of the community interests are the ones that are there, who can not only speak to the issue, but don't have to worry about recusals. And we are more than determined to do that.

So, I'd like to just move on, if we might. I

1 don't know if we can solve this part today.
2 Senator Bowen, I believe you had another point.
3 Thank you, sir.
4 SENATOR BOWEN: I have some questions about
5 matters other than the definition of the position, which is
6 without a doubt, problematic.
7 Just to sort of clarify for me, I was of the
8 opinion or had gotten the impression when you testified that you
9 had a small parcel of a couple of acres.
10 But the testimony in opposition to you is that
11 you own three ranches, and they seem to be a long ways apart.
12 Can you enlighten me as what your situation
13 actually is?
14 MS. MULHOLLAND: Certainly. I have -- the only
15 property that was being considered under the irrigated ag. was a
16 parcel of property that was in my family, and we own it with
17 other partners. And of that, the only part of that that was
18 subject to the irrigated ag's issue was, well, it depends on how
19 you calculate, seven acres of citrus.
20 SENATOR BOWEN: So, you have other properties,
21 but they don't meet the definition of a discharger?
22 MS. MULHOLLAND: That's correct.
23 SENATOR BOWEN: Then I go to your answers. In
24 answer twelve, which was a question -- the questions and the
25 answers are in two document, which is a little complicated.
26 But in discussing the recusal, you state is that,
27 quote,
28 "My conjecture is that every

1 property owner of over
2 two-and-a-half acres would be a
3 discharger due to storm water
4 sediment. Unless someone has a
5 direct line to Mother Nature, I
6 believe monitoring and enforcement
7 of the provisions as currently
8 defined is a practical
9 impossibility."
10 I guess I don't understand that two-and-a-half
11 acres comment, given that of your three properties, only seven
12 acres of one of them meets the discharger condition.
13 MS. MULHOLLAND: Can I expand on that just for a
14 second?
15 When I got involved in this, I realized that in
16 terms of policies and procedures, that I lived in a community of
17 many, many, many home owners who have anywhere from an acre, to
18 ten acres, to 2,000 acres.
19 And when I realized that if you had rain that
20 went across your property, and you had a livestock that you
21 might sell at sometime, you would come under the irrigated lands
22 issue if that water could go into drainage that would ever hit
23 public water.
24 And my feeling is that we have so many important
25 issues that need to be regulated right now, that sediment, which
26 is not something that's put in the land. We're talking about
27 naturally occurring sediment, coming down in a flood and
28 crossing somebody's property, if that's going to be interpreted

as an irrigated ag, I worry where we're going to put our priorities, because we have big things that need to be solved.

SENATOR BOWEN: I guess the part that I'm struggling with is, your statement, I think, is fairly inflammatory, that everybody who owns two-and-a-half acres, unless they have a direct line to Mother Nature, they're going to be a discharger.

And yet, of the three properties that you own, only one portion of one of them, even on the legal look, was determined to fall into that category.

I think my concern is, you're a public member. And you've got this statement that I consider to be pretty inflammatory with regard to the law.

MS. MULHOLLAND: Let me make one other point, perhaps.

The properties of the two acres, and one-and-a-half acre that I'm talking about, are within the exact watershed of a river. And there's three -- I can talk about my area, three rivers, the Tuley River. These are all watersheds where houses are built up and down the watersheds, so they directly during a storm go into the river.

I don't have any other properties that are anywhere near a river. So, when I'm talking about that, other than my family's, so those -- I own one other piece of property with my sister, and it is -- it doesn't flow anywhere, but there are many, many small acreages that have livestock that are close enough that the runoff could get to surface waters, in the same way as the water off of the seven-acre orange grove.

SENATOR BOWEN: We have a federal law that requires that we do something about nonpoint pollution and sediment.

So, the implication of this is that you would support a repeal of the federal law? Because you're saying that we can't possibly deal with those parcels.

MS. MULHOLLAND: I think that there's a prioritization that is really important. We have enough resources. We have to focus our resources on the big problems.

I'm not saying that anybody should be immune, but that I think that to look at the de minimus effect, we have to start looking at where are we going to put the resources and prioritize them? Where are we going to come down on the people that are really polluting?

And for me, you know, when you have situations where known polluters are causing groundwater pollution and surface water pollution by directly aggravating water by adding something to it, that is where I would like to put my efforts more than existing sediment flying off the Sierra, with nothing that no man has ever put anything on in the lifetime of that property.

That to me is not what the law is intended -- well, the law may be intended to do it. I would hope we would prioritize other aspects of water quality.

SENATOR BOWEN: Let's go to the big kahuna of the cases, then, which is Hilmar Cheese, where it took 15 years, and the water board adjusted standards upwards, as I understand it, four times, I think. And finally, only after there was

1 considerable coverage in the press was there a settlement.
2 Your comments on the Hilmar Cheese case are:
3 "Fines are punitive; they do not
4 solve problems."
5 MS. MULHOLLAND: That's probably my phone. I
6 thought I'd turned it off. I'm so sorry.
7 SENATOR BOWEN: It's all right. We've all been
8 there. There's no fine for it.
9 [Laughter.]
10 SENATOR BOWEN: Though if it were Senator
11 Migden's committee, you'd probably have your cell phone seized.
12 Anyway, your comment is:
13 "Fines are punitive; they do not
14 solve problems."
15 I'm actually very concerned about that, because
16 you've got somebody who, for 15 years, has basically flaunted
17 the law, not even come close, and has discharged in really
18 extraordinary amounts in that way that's a real danger, not just
19 to the environment, but to public health.
20 So, if you're not willing to use the fining power
21 of the statutes, what's the incentive for compliance in that
22 kind of a case in particular?
23 MS. MULHOLLAND: Well, I think I reread how I
24 wrote that, and I would like to say two things.
25 First of all, I do believe that there is -- it's
26 very important to punish. My biggest point on the Hilmar thing
27 for me, I was brand-new at the time, was that I was really --
28 and I voted for the fine, but I was really happy that there was

an educational or a study component to that, because when I was hearing that their way of solving the problem was taking tankers of the contaminants over to East Bay MUD and dumping them there, and that that was a legal solution, that didn't seem like a very good legal solution to me.

And I know I only need to worry about water quality, and that's my job, but I have to say, that really offended me, that there was a bigger picture and priorities.

I think that it was the highest fine that had been given to that time. I think it was a good fine, but I'm very anxious to make sure that we're looking at alternatives that make sense to the whole issue.

And I think that that's where my answer was.

SENATOR BOWEN: Such as?

MS. MULHOLLAND: Well, such as the study that they're trying to look at how can they remove more salinity from the water to get it down to salinity level that's better than what they take in when they start the process.

I've been told that they -- we do not yet know how to do that.

So, you know, I wasn't involved in the history before of how many times they were fined, and certainly staff came to us, and our legal counsel came to us and said, this is a solution. They paid the fine.

But I was glad that we're looking at the other component as well.

SENATOR BOWEN: I guess 20 years of looking at how we deal with polluted water, the removal and dilution is

actually a fairly common solution right now.

In the San Onofre, at one of the nuclear reactors, they're moving tritium contaminated water far out into the ocean. That's been done. The Hyperean Outfall in Los Angeles County doesn't reduce the amount of stuff that goes into the ocean. It just pipes it further out.

So, if you're willing to take that one on, God bless you. That's not just an issue for your board.

But I think my concern here is the whole picture that I got when I read your answers.

Question Ten, which is a question about enforcement options for long-term violations, you comment:

> "Fines should follow when infractions are deliberate and available options have not been utilized by the cited party."

Again, I have real concerns about that, because you don't fail to get a speeding ticket or a fine just because you didn't realize that you were going 20 miles above the speed limit.

We have a system of laws in which people are required to know what the law is. And there is no requirement in our law that an infraction be deliberate before it's met with some enforcement action.

Can you comment on that?

MS. MULHOLLAND: I've been very impressed, being on the board and working with our new executive officer, in elevating issues right away.

So, I think -- I mean, I wasn't there before last November, but I think that bringing things to the surface so that it's very clear when -- that there is going to be a limit, and you are going to be fined for it, and you are going to know when you're in infraction, but it seems as if you have to make that clear. And just in the cases that I've sat on so far, I've taken really hard action on some very deliberate contributors to groundwater pollution that knew what they were doing.

And I think in some circumstances, the board is working with people to make sure that we can undo infractions, and that they're working in many instances to get it cleaned up as quickly as they can.

SENATOR BOWEN: The next gentleman that we're going to hear from today is from the North Coast Regional Board. And in his answer, he says that the mandatory minimum fine requirement has significantly improved compliance and reduced violations.

I take it that you would is not support that, a mandatory minimum fine standard in your board?

MS. MULHOLLAND: If there was an accepted minimum or maximum fine, or however, if it was very clear, and we could see that that person had caused the infraction, yes. I think that that should happen.

SENATOR BOWEN: But regardless of whether it was intentional or not?

I mean, one of the purposes of having standards is to affect people's behavior. So, we have a speed limit so that people think about slowing down when they're in school.

1 MS. MULHOLLAND: I am a firm believer in best
2 management practices, and going along with that. I think that
3 when you're identified, then you have to step to the plate and
4 fix it. And if a fine goes with that, fine.
5 I'm not -- I'm not of the ilk of "come back and
6 see us again in five months, and we won't do anything in the
7 meantime," and then it happens over and over again. I think
8 that's not okay at all.
9 But I do think helping people to come into
10 compliance is really important.
11 SENATOR BOWEN: I agree with that, but I'm also
12 really concerned, and you cite yourself, that there's just not
13 enough staff to monitor anything.
14 One of the ways that we help people to come into
15 compliance is to have consequences for noncompliance.
16 Again, this is a big picture concern in reading
17 these answers, because there's also a question about numeric
18 limits, and you state that you believe that they can be too
19 prescriptive, and that narrative limits were probably the best
20 standard.
21 From my perspective, I think it becomes very
22 difficult for either an enforcer or a discharger to know when
23 they're in violation in a narrative standard.
24 How do you enforce it with a narrative standard?
25 Perhaps I don't understand what you mean.
26 MS. MULHOLLAND: I'm struggling with this myself,
27 because when I wrote the answers to that, it was in January.
28 And I started in November. So, I've been around a little bit

more from that time.

And my first reaction when I was on the board, and reading all the background materials that we get, is that it was hard for them to come up with numeric standards that make sense in all situations. There'd be a range, but then it didn't apply here, but it would apply over there. And I was very frustrated with the fact that we weren't talking about what we were trying to get to. Where were the narrative standards saying we want to accomplish the following, and this is how we're going to get there. And so, everybody would be just arguing, it seemed to me at the time, about, well, I'm only, you know, two miligrams over, but this other person was ten miligrams over, but that's because his incoming water was 30 miligrams, and he's increased it.

So, to understand how to apply those numeric values was very difficult for me. I still don't have it.

And I think, I mean, I've come a long way in realizing that there have to be numeric standards from the frustration I felt in the beginning, but I do think it's very tough to put a number and say, "This is the number that has to exist."

And I see, when I listen to both sides of any argument that comes before us, there's a continual argument over how many miligrams or micrograms, and I don't know sometimes that that has helped me to realize what the problem is and what the punishment for it should be.

SENATOR BOWEN: I understand the point, but legally the reason that we have a definition, for example, a

very specific definition of crimes is that under our Constitution, you have to have notice that a particular behavior is prohibited, because we deem it to be unfair to penalize someone, whether it's through a fine or a criminal proceeding or whatever, unless the behavior that's prohibited is very specifically defined.

So, I don't know how to get around that. At least if you've got a numeric standard, people can be presumed to know what it is they're supposed to be doing. And then, how do you set that, that's another matter.

But I think the purpose of it is the kind of certainty that's required to make an enforcement scheme constitutional.

MS. MULHOLLAND: I agree with you. And I think the regional board's job is to take up legislation, and then make sure that they're applied correctly.

I just find some of the standards are a little mushy, and I'm still working with that, some of the specific numerical values. That's not my job. I mean, my job is to say this has been set.

I would like to see those standards set on best management practices, but I realize my job is to regulate according to the standards that are set down.

SENATOR BOWEN: Your answer to the first question, I think, was probably my first -- the first red flag went up. You write:

> "I firmly believe that water quality, while our task to protect

and certainly the center of our focus, must fit within a larger spectrum of balanced concerns. I hope to increase the consideration of all relevant concerns in our decision making."

That sounds like some kind of code to me for not enforcing the law. I don't know what it means.

MS. MULHOLLAND: Well, I was really -- my hot button at the moment was that we were looking at Hilmar Cheese and saying, it's fine if you take 60 tankers a day and drive them over the Altamont Pass, and take them to East Bay MUD and dump it. And my feeling on that was, wait a minute, who's looking at the big picture?

My job is to look at water quality, but I don't think that that happens in a vacuum. And I worry about, well, let's just move all the cheese plants out. We've got the biggest dairy industry in the world, so let's move them to Arizona, where they don't have regulations, and we'll just tank everything there.

I'm not saying that there shouldn't be punishments, but I think that we have to always keep in mind the bigger picture of what we're trying to do. And I think as a public member, I need to bring that to the forefront in the sense that we don't live in a vacuum. And I think that we have to look at that.

SENATOR BOWEN: I think the question becomes, how do, for example, the people who are here talking about the fact

1 that they can turn on their tap and not get anything that they
2 can drink, what's your responsibility to deal with that within a
3 larger spectrum of balanced concerns, which is a phrase that I
4 just really don't know what it means?
5 MS. MULHOLLAND: Everybody should have clean
6 water to drink. And I think that everybody that I've worked
7 with on this board, and everybody I've talked to on staff, puts
8 that as a huge -- I mean, that's why we're here. That's why
9 we're doing what we're doing.
10 We still have a certain number of resources that
11 we have. I mean, that's -- I was told that every staff member
12 has 70 cases. So, we have to try to figure out how we can do
13 everything that we can do, the best that we can do it, with the
14 resources we have.
15 And, you know, in terms of all of the issues that
16 are involved in rural communities, it's a big issue. I mean, I
17 don't have all the answers in terms of how do you get sewer
18 treatment plants into these small communities so that we can
19 make sure that they have safe drinking water? I don't know.
20 There are certain parts of that issue that are
21 bigger than me, but they're all part of the problem.
22 SENATOR BOWEN: Let me ask you how many times
23 you've had to recuse yourself from votes? I think we had just
24 one example. Are there other instances?
25 MS. MULHOLLAND: No.
26 SENATOR BOWEN: Okay.
27 SENATOR ASHBURN: I'll move the nomination.
28 CHAIRMAN PERATA: Do you have family here that

we've tortured?

MS. MULHOLLAND: I did ask my son to come, and I'm glad he didn't.

[Laughter.]

CHAIRMAN PERATA: He's outside on the curb, throwing up.

We have a motion to approve. Any further comments from Members?

SENATOR CEDILLO: I'll skip the questions because I know we have to move, but I do have those concerns about the Code. I don't really know the candidate, but the Code concerns me. It seems ripe for legislation maybe next year.

CHAIRMAN PERATA: That's been worked on. I think the most direct line to where the people who have been testifying want to go is for us to tell the Governor that we want to sit down and talk about these three openings.

And I understand that people from the community have some nominees, who will probably hate you for it.

[Laughter.]

CHAIRMAN PERATA: But you can go ahead. You make the nominations, and we'll go to bat for you. We'll do that.

SENATOR CEDILLO: Right, but then we need to clear up the Code so it's explicit.

CHAIRMAN PERATA: Yes, they've been trying to do that, but we will continue to work on that.

CHAIRMAN PERATA: Okay, please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: No.

SECRETARY WEBB: Bowen No. Cedillo. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Three to one.

CHAIRMAN PERATA: And I want to thank all of you that came that 600 miles today. I hope you won't find it a waste of your time.

If you check back with Nettie in the not too distant future, we're going to have something to report to you about our conversations with the Governor.

Thank you very much, Ms. Mulholland.

MS. MULHOLLAND: Thank you very much, Senators.

CHAIRMAN PERATA: Senator Chesbro, you were very patient. Thank you.

SENATOR CHESBRO: Mr. Chairman, I had a chance to witness some of the struggles you've been going through to try to sort through some of these issues.

But I'm here to vouch for your next nominee, this to the North Coast Regional Water Quality Control Board, Bob Anderson.

I not only want to vouch for him, I also want to express my gratitude for his willingness to serve.

He is a long-time friend and acquaintance and does represent irrigated agriculture in a way that I'm certain can meet the criteria to serve on the board.

But much broader than that -- and I know he's in this category and after the last discussion, I almost hesitated to bring this up -- but much broader than that, he is a community member, and has played a real role in helping to bring together contentious sides, helped to settle fears about different issues that have come along.

I know you're used to me talking about how the timber issue at the north end of my district is contentious. The wine issue, believe it or not, I know those of us who love wine and love the --

CHAIRMAN PERATA: Can't you just get along?

SENATOR CHESBRO: -- industry, it's hard to believe that there could be a conflict and contentiousness, but there is.

But I would like to tell you, one of the reasons we don't hear more about it because of people like Bob Anderson. He's played a real role in bridging and talking and communicating between the different communities.

A good example was a few years ago, when the -- and it still is a big threat -- but when the threat of the glassy-winged sharpshooter arose, and many in the community were very fearful about the prospect of aerial spraying to try to control that, some in the wine industry, and Bob was one of them, played a real role in helping to settle that and bring the various sides of the discussion together around the idea that the best way to avoid that discussion was to keep the sharpshooter out through a prevention program. And that has helped us to then, at the state level and the national level,

1 focus resources very effectively.

2 So, I can't say enough about him personally, but

3 professionally, I think he has served well, he will serve well,

4 and I commend him to the Rules Committee.

5 CHAIRMAN PERATA: Thank you, Senator.

6 Mr. Anderson.

7 MR. ANDERSON: Mr. Chairman, Bob Anderson,

8 Healdsburg, California.

9 First, I want to thank Senator Chesbro for his

10 kind remarks, for being here today.

11 If I may take a moment to introduce my wife and

12 daughter.

13 CHAIRMAN PERATA: Please do.

14 MR. ANDERSON: My wife, Mary Berg, Dr. Mary Berg,

15 and daughter Clair.

16 CHAIRMAN PERATA: They're still here.

17 MR. ANDERSON: And as Senator Chesbro said, I do

18 work for the wine industry, United Winegrowers. It's been

19 almost 20 years ago the trade association was formed in order to

20 have somebody involved on a day-to-day basis in the community

21 affairs of Sonoma County. I just work in Sonoma County,

22 represent both winery and grower interests.

23 Before that, I worked four years at Capitol Hill,

24 United States House of Representatives. It's my first time on

25 this side of the table. I sat on the other side as a staff

26 member to the Committee on Agriculture, involved at that level

27 of the political debate.

28 Currently, I work on variety of water, water

quality issues, as well as a host of other things. Just give some of what I do on a daily basis, I'm involved in transportation. Our county's been through four ballot initiatives, sales taxes. Since 1990, I've been Chair of the Citizens Committee in charge of overseeing that.

CHAIRMAN PERATA: Did you finally pass one?

MR. ANDERSON: We did.

CHAIRMAN PERATA: Congratulations.

MR. ANDERSON: I served as Chair of the ballot initiative, co-chaired that.

In 1990, we also passed an open space, quarter-cent sales tax, to prevent or preserve agricultural open space lands. The voters approved taxing themselves to have a program. I sit on the Open Space Authority that oversees that, been there since 1990.

On the water side, since 1998, I've been involved with the Russian River Watershed Council. At the first meeting, there were 300 people turned out. At our last meeting a Saturday ago in Cloverdale, they're down to about 14 or 15 people, but the group continues. They're still interested in doing good things in the Russian River watershed.

A year ago at this time, I was invited to attend the President's Conference in St. Louis on Cooperative Conservation for the work that we've been involved in. And just this past Friday, attended an erosion Control Workshop, where vineyards opened up their property to demonstrate new, innovative erosion control techniques out in the vineyards.

As to the region, as you know, the North Coast

1 can be a diverse, dynamic group of folk. Before I came on the
2 board, Senator Chesbro talked about the timber issues, I
3 attended one of the regional board hearings. I counted 13
4 sheriff's deputies in attendance. When we met earlier this year
5 in Eureka, we were down to two.
6 So, when people ask me how things are going, I
7 just report we're making progress. At our last regional board
8 meeting, we had a timber issue in front of us, different
9 company, same watershed, and it was virtually on the consent
10 calendar. So, I think we're making some progress.
11 For my role on the board, I can say I'll do my
12 best to represent. At the end of the day, there's a full, fair,
13 and complete hearing record. All sides are heard. Do my job to
14 be informed before I come in the room. Ask good questions.
15 Help inform the board as to the issues involved, make sure all
16 sides are heard. And probably at the end of the day, the action
17 we take will make both sides mad, but that's the nature of the
18 process as I understand it.
19 I do know that some questions have been raised as
20 to my eligibility to serve because of the association I have,
21 working as Executive Director of the Wineries Association. On
22 that, if you have questions, the Assistant Chief Counsel of the
23 State Board is here and can answer that.
24 On the question of my involvement in the future,
25 at this point I have not -- I've served on the board since
26 January. I've not had to recuse myself. In the future if I
27 do, I will consult with the attorneys and pledge that I will
28 avoid the appearance of a conflict.

With that, happy to respond, answer any questions.

CHAIRMAN PERATA: Thank you.

Questions from the dais.

Anybody here in support? Anyone here in opposition? Far out!

We're not going to sustain this. We thank you for what you're doing. You have a wonderful area of the world to represent. I'm glad you're doing all that you can to preserve and sustain it.

SENATOR ASHBURN: Move.

CHAIRMAN PERATA: With that, call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations.

Make him buy dinner.

The next three, Members, I'd like to come up together. We have Assembly Member Emmerson to introduce Ms. Beswick, and Senator Hollingsworth for Ms. Cramer.

Why don't the Legislators come forward and the nominees.

MS. BESWICK: There are only two of right now. The third one dashed out to get her elected official. I think she thought after the last one, she might have a little more time. She'll be back in a moment.

CHAIRMAN PERATA: I'll stand in for her. I'm very big in Santa Ana.

[Laughter.]

CHAIRMAN PERATA: We'll give you the home field advantage.

ASSEMBLY MEMBER EMMERSON: Thank you.

I wanted to do introduce my friend, Carole Beswick to the panel.

She's been very involved in my community; I live in Redlands. And she started out as an elementary school teacher, and later was on the City Council in Redlands, and served as its Mayor from 1983 to 1989.

She is, as I say, very active. She's been a member of the South Coast Air Quality Management Board. She's also been on the Southern California Earthquake Preparedness Project. She was a Governor's appointee in 1984 to 1987.

She now is a member and present Chair of the Santa Ana Regional Water Quality Board, representing the counties from 2000 to the present. So, this will be her third term. She filled out an unexpired term, then she's been on one term, and this would be her third.

So, I introduce Ms. Beswick.

CHAIRMAN PERATA: We'll go to Senator Hollingsworth.

SENATOR HOLLINGSWORTH: Thank you, Mr. Chairman.

It gives me great pleasure to introduce Mary Cramer to the Committee today and ask for your full support of her.

Mary is a long-time friend through my growing up and being involved in the agricultural community in Riverside County. And her involvement in the agricultural community, and her appointment to the board as the irrigated agricultural slot. And I almost hesitate to bring that up, given the previous appointment.

[Laughter.]

SENATOR HOLLINGSWORTH: However, I think that you will note from her responses to the questions, as well as her bio, that he has been very actively involved not only in the agricultural industry, but she understands the community. She understands the problems that are presented, from the perchlorate issue, and has the long-term relationships to be able to deal with that problem.

Further, this is not a new area for her. She is coming to the second time, previously having served as a Gray Davis appointee for the Agricultural Board. So, she is very well suited to this line of service to her community, and hope that you will all support her as I do.

CHAIRMAN PERATA: Thank you, Senator.

And you couldn't rustle anyone?

MS. NEEV: I can't rustle anybody up.

CHAIRMAN PERATA: What we'll do is, Senator Soto is here.

Did you want to pose a couple questions?

SENATOR SOTO: I had a concern.

CHAIRMAN PERATA: Sure, why don't you do that, and everybody can answer it.

SENATOR SOTO: I just wanted to bring my concern out. I don't want to go against any nomination or anything.

I just want to bring your attention to the fact that just after I was elected in 2000, the water agencies discovered that they had extremely high readings of perchlorate in wells throughout Rialto and Fontana, and were found to have perchlorate.

The water agencies came to me for help precisely because they did not think the regional board was being very helpful.

Groundwater is the primary source of drinking water for over a quarter of a million people. Since this contamination was the result, for the most part, of defense related activities in my district, and it has state and national implications.

Mr. Chairman, it's my conviction that the Santa Ana Regional Board has complicated the problem by its slow response and often contradictory actions. For instance, in 2002, the Executive Office issued a series of Cleanup and Abatement Orders that could have moved the process ahead dramatically, but the board sided with the polluters and cancelled the Cleanup and Abatement Orders.

The board said they favored a cooperative approach, but that repeal has led to outrageous delays.

I ask you to consider where we are today with respect to perchlorate contamination in the 32nd Senate District. We have seen huge rate increases in Rialto. They have found 20 contaminated wells in that area right around Rialto, with smaller yet significant rate increases in Fontana. Because of the cleanup, they've had to increase the rates.

At the moment, only a small number of the contaminated wells have proper treatment equipment on site, a very few wells have been given cleaning equipment. One of them is in the San Bernardino area, where they put in some treatment equipment, and it cost them $250,000 each set of cleanup machinery, as they call it.

There's no plan in place to clean up the groundwater, no plan to provide replacement water, and no plan to reimburse the ratepayers. I think that that's unacceptable.

I hope the board, under Ms. Carole Beswick, will make a commitment today to reinvigorate their enforcement, and commit to more aggressive leadership.

The perchlorate problem threatens the economic vitality of my Senate District. The Santa Ana Regional Board is in the middle of this morass, and they need to adopt a stronger approach.

I am less concerned about the specifics of who does the job, as long as we get results, and we need the residents to get the relief that they deserve.

And the reason I'm here is because I brought this up a couple of years ago. It's not the fault of theirs, what took place, but it is something I think that should be given

more attention. And I'd like a commitment from them today, if they are approved, that they would give a lot more attention to the cleanup of the perchlorate in that area.

I don't know whether they realize the implications and the detriment that perchlorate is to the region. Perchlorate causes a decrease in the intelligence quotient of children, and it has an effect on thyroid, on the thyroid gland. And it does stunt the growth of children, which has been found and that is recorded.

So, I would like them to give a little bit more attention to that, and be a little bit more committed to the cleanup of the perchlorate in the regional area, the 32nd District.

That's all I had. I just want a strong commitment from you that it would be considered, and looked at, and really take some action.

And I'll help in any way that I can.

I took Senator Feinstein down there one day, and Senator Boxer. And they're committed to helping get the money to try to help with the cleanup. So, anything that we do, or that you can come up with, I'd be really happy to bring in Senator Feinstein again, to see that she is able to get the money from the federal government to try to clean it up.

It was all done by defense people, you know, when Boeing was located there, and some other factory for making missiles and scuds and bombs.

So, I'm willing to go on ahead and try to help you in any way that I can. If you do get the nomination and

you're willing to work with me, I'd be willing to work with you to try to get it a little bit more cleaned up by the time I leave office.

Thank you.

CHAIRMAN PERATA: Thank you, Senator.

SENATOR SOTO: Thank you for allowing me.

CHAIRMAN PERATA: Our pleasure.

So, Ms. Beswick, you may start off.

MS. BESWICK: Thank you.

Good afternoon, Chairman Perata, Members of the Committee.

My name is Carole Beswick. I am a native Californian. I think I need to say that because it's important to me to be doing this kind of work in our state.

SENATOR SOTO: There's very few of us left.

MS. BESWICK: I know.

I was born in Los Angeles, grew up in Whittier, and I've been in Redlands for almost 40 years.

However, just in deference to the Chairman, my brother and my father were born in Oakland. Actually, my uncle was the Alameda County Assessor for a long time. So, I'm just appealing --

SENATOR CEDILLO: All you need is Bakersfield.

MS. BESWICK: Careful, I can do that, too.

[Laughter.]

MS. BESWICK: We're spread up and down the state.

I appreciate the opportunity to be here today and to talk to you a little bit about the goals of the Santa Ana

Regional Water Quality Control Board.

You do have the two letters in your file, one of which Senator Soto has referred to just now. And I need to say, because we know how important lawyers are in our world --

CHAIRMAN PERATA: You don't have to say that.

[Laughter.]

MS. BESWICK: I really do. I'm married to one.

CHAIRMAN PERATA: Oh, I'm so sorry.

[Laughter.]

CHAIRMAN PERATA: Is he here?

MS. BESWICK: He's having a better time today than I am.

CHAIRMAN PERATA: He's not here?

MS. BESWICK: No, he's in trial.

But I would like to point out that this is an extremely contentious and actively adjudicated matter pending before us, and so on an ongoing basis, our board's going to be asked to conduct various hearings to determine which entities are responsible for paying for further investigation, for cleanup, for replacement water.

And it would be completely inappropriate for any of us to prejudge the outcome of those hearings.

In addition, with all due respect to those who are here today who may want to speak on the issue, the three of us have to be careful not receive any new substantive comments today regarding responsible parties and water replacement.

CHAIRMAN PERATA: It's highly unlikely that's going to happen.

[Laughter.]

MS. BESWICK: You never know.

So, we just want to make sure that we conduct full and fair hearings. And so, since we're acting as judges, we want to remain impartial and open minded until we hear all of the evidence.

Phil Wyels, who is the Assistant Chief Counsel of the State Water Resources Control Board, is here today. He's assisting our staff that's spearheading the perchlorate issues. And if you would like him to, he could briefly give you some idea of the legal issues that exploring the cleanup could present, and why the three of us have to be particularly cautious.

It's certainly your call. Mr. Wyels is sitting over my right shoulder.

CHAIRMAN PERATA: We'll take it as an act of faith.

MS. BESWICK: Thank you. He thought you might do that.

CHAIRMAN PERATA: He didn't expect to be here until 6:00 o'clock.

MS. BESWICK: Let me first say, it's an honor to serve as a member of the Santa Ana Regional Water Quality Control Board. The mission of the body is vital to the health of the environment that we all live in our region. From the San Bernardino Mountains and Big Bear Lake, to Newport and Huntington Beach in Orange County, and the entire watershed in between, our region faces many, many issues.

But none is more pressing nor a higher priority for our board and staff than the cleanup of the groundwater in the Rialto-Colton area. We have made an extraordinary commitment of resources, no less than and often times more than five full-time employees and the financial considerations that that entails. We've required millions of dollars of state-of-the-art groundwater monitoring wells on site where the industrial discharges, the military discharges that you heard about, took place, and downstream, where the perchlorate plume in north Rialto has migrated.

Thousands of soil, groundwater, and vapor tests have been required, and a staggering amount of data has been and continues to be generated.

Now, all of this will be used in the overall evaluation of the aquifer -- we have to characterize these plumes to know where we're going to in our cleanup -- and in the process of creating that characterization and adjudication about who will be required to pay to clean up the perchlorate, and how best to approach and design the ultimate cleanup strategy.

Well head treatment continues to protect the quality of public water supplies. And when necessary, our board does require replacement water.

As you can imagine, fully understanding this complex issue takes an enormous amount of time for our board members, and with extensive reading and studying that we have to do to prepare for meetings and hearings.

I'm fully committed personally to addressing this

cleanup and sorting out its different issues. I've taken the time outside of regular board meetings to act as the presiding officer for the board, and have conducted some extra hearings to resolve some of the more contentious procedural issues on this cleanup.

On a personal level, I live in a city that has had a perchlorate cleanup. That's -- well, I don't want to say it's complete; it is. We had a company there who's been a very responsible one. They've spent about $100 million helping us clean this up.

When I say it's complete, it isn't. The plume still exists, but at least the barrier wells are in place, and we are having a very satisfactory result, all with the same process that we're going through here.

There's certainly differences at play in the two areas, but I just want you to know that I'm not looking just only at this issue. This is something that we live with in Redlands and still have an ongoing issue with it.

I hesitate to say this, but as board members, we're basically volunteers. So, we make every effort -- I can speak, I think, for Mary and Debbie, and those who aren't here today -- to learn as much as we possibly can about these, about this and all the issues facing our region.

I'm willing to dedicate the time and the effort to do whatever's required to complete the work of this and other issues facing our regional board.

I welcome Senator Soto's offers of assistance, especially if she can help us find some way into some federal

1 funding. That would be fabulous.

2 But I can't resist saying there are other

3 pressing issues facing our region. In Riverside County, we're

4 confronted right now with a community that has failing septic

5 tanks, and that's raising bacteria levels in Canyon Lake. And

6 we have a meeting next week with Supervisor Stone to see what --

7 what we're going to do. This is a very, very difficult problem

8 with people who simply can't afford the solution. And we don't

9 have somebody to turn to there to say, "You guys created the

10 pollution." So, this is going to be a huge challenge for us.

11 In Orange County, we're going to have to find

12 ways to address selenium, and actually currently there's no

13 technology to do it. So, that's -- our staff is wringing their

14 hands over that one.

15 And I worry about the backlog of TMDLs that this

16 is all creating, because we are putting such an effort into one

17 front. Believe me, I am as eager as anyone in this room to see

18 this perchlorate issue brought to conclusion so that we can get

19 on with some of the other things that we're confronted with that

20 are very, very important to our entire region.

21 But this will continue to be our number one

22 priority until we can say we've implemented the cleanup plan for

23 the Colton-Rialto area, that the appropriate responsible parties

24 are being held accountable, and that the drinking water for

25 these communities is protected.

26 I'd be happy to answer any questions.

27 I would like to just comment, Senator Soto

28 mentioned something about rescinding some Cleanup and Abatement

1 Orders. We did do that in 2002. It was an unanimous decision
2 of our board. And that decision paved the way for us to
3 immediately -- and at that time, we were confronted with how do
4 we quickly protect the drinking water, and where are we going to
5 get money. And by taking the action that we did, we got an
6 immediate $4 million from Goodrich, one of the parties, which
7 allowed treatment systems to be installed.
8 Now, you heard that 20 wells are impacted. Over
9 10 of them, I believe, currently have well head treatment, or
10 maybe 11. We're right -- we're moving forward on well head
11 treatments. So, it isn't as if we have 20 wells that have been
12 simply sitting without attention. We have been moving forward,
13 certainly, on protecting the drinking water.
14 At that time, the board told the staff, "Okay,
15 broaden the investigation. Who else is out there?"
16 And it's resulted in an identification of
17 additional potentially responsible parties, completion of the
18 soil and groundwater investigations that I talked about, and the
19 funding to do that.
20 So, I feel like we're making progress. It
21 sometimes may not be as evident to someone who isn't sitting
22 here with us, sort of on a day-to-day basis, of watching how it
23 happens.
24 None of us would like -- and we'd all like things
25 to move faster, but good science, which is what we have to base
26 this on, takes time. I often say to people, you can do it
27 faster, or you can do it right in many instances. And it's
28 really critical that we do it right. We don't want this plume

to escape, whatever ultimate solution we find for it.

So, I'll stop and let my colleagues chime in.

CHAIRMAN PERATA: Thank you.

MS. CRAMER: Thank you, Chairman Perata and Committee Members.

I'll be very brief, I promise.

As everyone has heard, my name is Mary Cramer. I represent the ag. I've been in agriculture all my life, growing up mostly in Norco in Riverside County. My family was in animal agriculture. We were in the ag. business for many years.

My father sold his company in 1999 to Land O'Lakes. I'm the daughter of immigrants. My parents are Holocaust survivors. And at the time that we were in business, we had employees of nearly 500 in Norco and the surrounding areas.

I remarried, and so now I live in Anaheim, but my husband is also in agriculture. I'm a new appointee to the board, and I'm pleased to meet everybody face-to-face that I've seen on all the paperwork and so forth.

I want to mention that I am very committed to our region. The Inland Empire is now growing in population and importance, and along with that comes all kinds of pollution. Water is very important to the Inland Empire. Water's very important to agriculture. And as a matter of fact, when I lived in Norco, we had the worst water. It was just brown coming out of the tap.

So, I'm very committed to all the water issues

and what it means to the population.

I'm also very committed to environmental preservation. And I'm still learning all the processes, and especially how the board runs. And I can't claim to say I know everything, because I've only been to four meetings, but I'm trying to learn. And if I could learn business in 20 years, I'm sure that I can learn all that's necessary in much less time than that.

I hope to bring to the board my business diversity and my insight into agriculture, as we did have water issues when we had to wash our eggs. So, I realize a lot of the issues that come with waste water treatment and responsible treatment in that manner also.

I'm committed to trying to resolve all these issues. I've come in on this perchlorate issue, and I'm trying to study it. It's very complex. And if it is in my power, I'd love to solve it immediately, but it's not in my power. I'm just a member of the board.

And we have limited resources, as everyone talks about, but it's true. If we can get funding from the federal government, Senator Soto, you are a God-send, and we will kiss you for that. Thank you.

I'm committed to enforcing the law. If people are polluting, they have to pay for it, because it's not only our drinking water, it's the drinking water for the next generation and generations to come. We have to be responsible in the area, because we're only getting more and more population.

So, I want everyone to know that I am committed to the most sound advice that we are given by our staff, and in the most responsible and expedient manner that the attorneys will let us do.

I thank you for your time.

CHAIRMAN PERATA: Thank you.

MS. NEEV: Thank you. I'm sorry I was late because I was trying to rustle up someone to introduce me. They'd all left the building, so I'm sorry.

I'm Deborah Neev, and I have been involved in the water business in my career for over 20 years. I'm here today because this is absolutely my passion.

I live in Laguna Beach, and I'm a Water Commissioner in Laguna Beach, and have worked in Irvine for many, many years.

So, not only -- so, this kind of -- so, not only water quality and groundwater issues, but also water reliability is very paramount, one of my paramount issues, looking for the future, looking for my kids, hoping that they don't grow up and leave California because of all these issues.

I have been, as I said, I've been in the environmental business and very intricately involved in looking at cleanup issues, looking at things that municipalities deal with.

Perchlorate is a huge, huge issue, I think, in California. And it will be across the country, eventually, because of what it was used for.

And I'm absolutely committed.

I am also a new appointee, and would love to serve in this capacity, and making sure that we are moving forward and continue to move forward in cleaning up this very critical issue.

As Ms. Beswick has also mentioned, issues in Quail Valley and some of the other issues, as I learn more and more about all of the intricate issues facing our region in Southern California, I think there's a lot of work to do. And I think that I can serve you well and do good work.

CHAIRMAN PERATA: Thank you.

Now, Mr. Cedillo.

SENATOR CEDILLO: I think I have the answer. I'm just concerned about this attitude, and I'm concerned for my colleagues.

There's not this strict enforcement on this abatement, and what was it?

MS. BESWICK: Cleanup and Abatement Order.

SENATOR CEDILLO: Cleanup and Abatement Order.

Why was it necessary to dismiss the order, or to remove the order? What would have been the result had we not done that?

Here's the dilemma I have. Most of my colleagues, particularly on the other side of the aisle, believe in strict compliance. If you don't comply, there's a penalty. You know, you have to go to jail, or you lose your driver's license, or you can't get a driver's license. That always comes in.

[Laughter.]

1 SENATOR CEDILLO: And then, we have this matter,
2 which is a breach of the law, right? The laws are that you
3 can't pollute. The board finds that they do pollute and gives
4 them a direction, and then they step back and say, "You don't
5 have to apply."
6 As my colleagues would say, "What part of 'legal'
7 don't we get here on this board and on these actions?" What
8 part of "legal" don't we get here?
9 MS. BESWICK: I'm not equipped to speak to the
10 legal part. And I'd be happy to ask Phil to do that.
11 I can tell you what led to the -- this decision.
12 SENATOR CEDILLO: Tell me what would have
13 happened had you not come to this decision.
14 MS. BESWICK: If we'd not come through, I believe
15 that we would not have had any funds available to us from one of
16 the potential -- what we potential polluters.
17 SENATOR CEDILLO: Why not?
18 MS. BESWICK: Because I think they would have
19 been in court. I think we would have probably -- what we were
20 trying to do was move forward to protect water as quickly as we
21 could. And that was the fastest route we had, was to allow that
22 potential polluter to -- I hope I'm explaining this right, and
23 if not, somebody in the back will come up, Phil will come up and
24 hit me on the head -- but what we were doing was trying to find
25 a way to quickly get enough money to do something about
26 replacement water.
27 And the four million that came from that
28 agreement with that particular party is what allowed us to have

that first big chunk of change that got us started down that road.

The rest of our funds, and I think I addressed it in -- in our questions. Oh, I know where it is. Hang on a second and let me just tell you.

So, in addition to the four million that we got in the interim settlement, we ended up with an interim settlement with that polluter, we had three million from the State Water Resources Control Board Cleanup and Abatement Account, and three million from -- plus or minus, from Props. 13 and 50. Those both took quite a bit of time. We could very quickly get our hands on that money and begin doing something about the quality of water that was going to be delivered from those 20 wells. We still don't have all 20 of them cleaned up.

But that was the reason that the CAOs were rescinded, and those CAOs are still available as a tool.

SENATOR CEDILLO: I'm very disturbed by that.

Senator Bowen was talking about a person who gets stopped. We have the sense that there are laws there. You don't need to get notice. And you can't buy your way out of the over deal. I mean, the law enforcement officer doesn't say, "Well, you're going over 20 miles."

And you say, "I know you guys have a scholarship fund, and I'm really in a hurry. And I promise I'll slow down, but just let me slow down, and here's the way. Let's negotiate on how I'm going to slow down, and when and what are the circumstances."

MS. BESWICK: You kind of had to be there. Part

1 of the issue was that this was at the outset of our beginning to
2 deal with this. We are -- we have an ongoing debate with
3 polluters as to whether or not they're really the responsible
4 parties. One of them did not step up to the plate, and we're in
5 litigation.
6 We really didn't see another viable option at the
7 time than to make that -- to make that possible.
8 Now, I think I can also tell you --
9 [speaking to Counsel] Can I tell them about the October date?
10 With Goodrich?
11 Okay, we have had this agreement. And Phil, I
12 wonder if you should maybe -- can he just explain that piece of
13 it, so would that be all right with you, Senator?
14 SENATOR CEDILLO: Fine.
15 MS. BESWICK: Just because I don't want to
16 misspeak. I do want to be accurate about it. It's a very good
17 question.
18 MR. WYELS: Thank you, Mr. Chairman and Members
19 of the Committee.
20 Phil Wyels. I'm an Assistant Chief Counsel with
21 the State Water Board.
22 And as Ms. Beswick said, I've been working with
23 the staff who have been trying to bring the case to the board to
24 get inclusion, so that we have responsible parties that are
25 found to be liable for the contamination and actually get the
26 cleanup going.
27 If I can, just stepping back one moment, the
28 problem here is that we haven't yet determined -- the board

1 hasn't yet determined who is responsible for the pollution. And
2 as hard as that may be to understand, what we're talking about
3 here is a number of different potential sources of perchlorate,
4 very difficult geologic issues, to try to go back and figure out
5 whether there were discharges some 40 or 50 years ago that
6 caused some of this contamination.
7 So, the reason that it's been taking so long is,
8 there is an incredible amount of evidence that is currently
9 being produced and synthesized so that the staff can actually
10 make a proposal that reflects all of the evidence, so the board
11 can determine who's responsible for the cleanup.
12 It's not that we've actually -- nobody has
13 identified who's broken the speeding law yet. That's what we're
14 trying to hold the hearing to do.
15 In terms of these board members here, though, of
16 course they're going to be acting as judges, and that's why they
17 have to be very judicious in terms of what they can say in terms
18 of prejudging the outcome of the hearing, which is currently
19 scheduled for them to have.
20 As far as what's expected to come up in October,
21 there is, as Ms. Beswick has explained, there was an interim
22 short-term settlement with one of the potential parties, whereby
23 they did some funding. That -- that settlement runs out, I
24 believe it's in October.
25 MS. BESWICK: October 23rd.
26 MR. WYELS: And so, at that point there's no
27 longer any reason why the board couldn't proceed with the
28 hearing for that responsible party. That settlement, interim

1 settlement, will have run its course. They have gotten the
2 funds, and it was really just a standstill for that one party.
3 I've probably been less brief than I wanted to
4 be, but I hope that helps explain why it's taking so long. And,
5 of course, nobody expected it would take this long to get to the
6 hearing itself, but it has.
7 MS. BESWICK: And I don't know if it helps me to
8 add, but part of the point of characterizing the plumes has been
9 to determine really where did they come from. We believe, staff
10 believes --
11 SENATOR CEDILLO: Let me ask you this question.
12 Then prior to your discussion about how you came
13 to this conclusion to step back from the order, what drove you
14 to issue the order? What facts, what evidence, did you rely on
15 to issue the order?
16 MR. WYELS: I'll try not to give you more detail
17 than you need, but essentially in this case.
18 Because we have to make sure that we're complying
19 with all the fair hearing requirements in the state law as
20 interpreted by the courts, we actually have separated the staff.
21 We've divvied up the staff between those who are trying to
22 advocate for a finding of responsibility against certain parties
23 and liability for cleanup on the one hand, and on the other
24 hand, staff who are advising the board and remaining neutral.
25 I have to tell you, I'm on the side that's
26 essentially prosecuting or advocating for findings of
27 liability. So in that vein, I can tell you that we initially
28 believed that we had sufficient evidence to name specific

1 responsible parties.

2 They mounted a very aggressive defense. The

3 board, from my understanding of it, the board determined that

4 the some of the evidence was inconclusive in terms of who was

5 actually responsible for the perchlorate. And so, as

6 Ms. Beswick said, they directed the staff to go out and do

7 further investigation.

8 Again, we believed we had sufficient evidence at

9 the time. In this kind of a complex case, we're continuing to

10 learn more. And frankly, we've learned a lot more since 2002,

11 and we believe that's going to help us significantly when we get

12 to the hearing to put on the case that's going to support naming

13 specific entities responsible.

14 MS. BESWICK: If it helps, at the very beginning

15 we had suspected parties. You know, things that looked like

16 that's probably where it's coming from, several. That list has

17 grown.

18 So, one -- another challenge for us was this

19 characterization of the plume, of looking underground. And I

20 think we're going to be able to be much more clear on the source

21 of these plumes as a result of this work.

22 So, what we were trying to do, as idealistic as

23 it may sound, we were really trying to move forward in a way

24 that got us to clean water and not into a long, and a really

25 protracted lawsuit. We were really looking for ways to, as

26 quickly as we could, address the issue of people having to drink

27 water that was not up to state standards.

28 So, was it a perfect decision? Maybe not. Did

1 it work and get us well head treatment and get us, as quickly as
2 we could, into having treatment? Yes.
3 So, you know, hindsight's always great, but I
4 think it had the desired effect. And we have not lost any
5 opportunities in doing this.
6 SENATOR BATTIN: Any other questions? Senator
7 Bowen.
8 SENATOR BOWEN: I just think it's really
9 important for us to note, and I charge the budget folks next
10 year with dealing with this, that we are leaving these local
11 boards without the resources to do their jobs. And I don't
12 think that next year's Rules Committees is going to see any
13 significant difference in kinds of discussions that happen at
14 confirmations until that changes.
15 MS. BESWICK: Thank you. We couldn't agree more.
16 And we also would second the conversation held
17 earlier about having a full board to work with. That's really
18 important, and the sooner the better, because with complex
19 issues like this, it's very hard to play catch-up.
20 SENATOR BATTIN: We've done opening statements, a
21 statement by Senator Soto.
22 Anybody want to speak in support?
23 And please, if you could, brevity.
24 MR. LOGAN: Brevity being the soul of wit,
25 Senator?
26 My name is Francis Logan. I'm outside counsel
27 for the City of Rialto.
28 Rialto is the city which -- under which the

1 perchlorate plume lies. We are very much an interested party in
2 the ongoing Cleanup and Abatement Order hearings. So, if I am
3 somewhat vague about the process going forward, it's because I
4 don't want to adversely affect the hearings going forward.
5 I would like to start by sharing the comments of
6 Senator Soto and sharing her concerns. The City has been
7 tremendously adversely impacted by the perchlorate crisis, and
8 it is tremendously frustrating to see one or two corporate
9 entities really appear to scoff at the jurisdiction of the
10 regional board in terms of living up to the responsibilities
11 identified in the Water Code.
12 That being said, it's important to recognize that
13 there are two principal components to what has slowed the
14 process down at the regional board. First is, as Chairwoman
15 Beswick has identified, is adequately identifying the source of
16 the contamination.
17 And second is recognizing that the
18 transactions -- that corporate transactions have taken place
19 over the last 50 years that have resulted in dramatic changes in
20 corporate identities. And it is critical to Rialto that we
21 identify the correct legal party. Obviously, if the discharger
22 named in the Cleanup and Abatement Order is able to successfully
23 obtain in a trial court or appellate court review of the
24 regional board's order that it is not, in fact, the corporate
25 successor of the entity named in the underlying Cleanup and
26 Abatement Order, that would tremendously adversely affect the
27 City's own litigation against that entity under the doctrines of
28 collateral estoppel.

We don't -- put simply, we don't want to lose our own federal case against the corporate polluters because the regional board moved too quickly and without enough evidence to establish corporate successor responsibility.

With regard to what the regional board has done for Rialto, the County of San Bernardino is complying with a Cleanup and Abatement Order and a replace water order. That replacement water is currently being delivered to the City of Rialto. That is of tremendous importance to the City in being able to meet water demands as the summer wears on.

The regional board has ordered nine field investigations, five of which are still ongoing. A tremendous amount of useful information has been generated out of those field investigations and will be critical in both the regional board's own hearing and in the City's own litigation.

And the regional board was critical in getting funds from the Cleanup and Abatement Account out of the State Board that were vital in getting enough well head treatments to keep the water on as we were pursuing our own investigations.

So, that's the City's position on the perchlorate crisis. If you have any questions of me or of the City, the City Manager is the available also for questions.

SENATOR BATTIN: Are you in support of the nominee?

MR. LOGAN: I am in support of the strongly continued efforts of the board in pursuing the polluters.

I believe that the board is doing as best as it can in very difficult situations, and I would like to echo the

comments of Ms. Bowen and Ms. Nell Soto of looking for additional resources, making additional resources available.

Determining the source of -- or determining the responsibility for a pollution plume that started 50 years ago is simply a very, very complicated process.

SENATOR BATTIN: Thank you.

MR. LOGAN: Thank you.

MR. BOCCADOR: Michael Boccador, on behalf of the Santa Ana Watershed Project Authority, in strong of all three appointees for the Regional Planning Agency [sic] for the San Bernardino, Riverside, and Orange County region.

We work closely with the board on water quality issues and appreciate their diligence in dealing with some of these important issues, including perchlorate.

Thank you.

SENATOR BATTIN: Thank you.

MR. COLE: Thank you, Members of the Committee. Derek Cole on behalf of the City of Colton.

And we are not going to take an official position as to the nominees, but I will say, and I'm somewhat scared to admit in light of previous comments, that I am an attorney. I am part of the litigation team for Colton in regards to the perchlorate issue.

And there are a number of lawsuits in addition to the matters that the regional board is considering, and I will simply tell you that I deal with this issue everyday. We have a number of attorneys in our firm that deal with the perchlorate issue. It is a huge issue. It is very complex. It consumes an

1 enormous amount of resources.

2 And unfortunately, there are parties who want to

3 very aggressively litigate rather than cooperate. So, that is

4 why that this issue has consumed an enormous amount of time of

5 the regional water board. Unfortunately, that will continue.

6 But certainly I will tell you that it's a very

7 complex issue, and I think that this board has acted

8 expeditiously, deliberately, but also fairly. So, those would

9 be simply our comments.

10 Thank you.

11 SENATOR BATTIN: Thank you.

12 Is there anyone in opposition to our nominees?

13 MS. NEWMAN: I started to say good afternoon,

14 but I see it's already evening.

15 My name is Penny Newman. I'm Executive Director

16 of the Center for Community Action and Environmental Justice.

17 We are an environmental justice organization that's been around

18 for 28 years, working in the Riverside-San Bernardino area.

19 I first came into contact with the regional board

20 back in 1978, with our work on the Stringfellow Acid Pits. Talk

21 about a site that is litigated, that had more than 250-300

22 responsible parties.

23 The particular issue of perchlorate came to our

24 attention in 1997. At that time, the Department of Toxic

25 Substance Control, when it first identified that perchlorate was

26 in our groundwater and threatening water wells, immediately put

27 people on bottled water, moved to connect people to a different

28 water source, installed extraction wells, and began work at

1 really containing and mitigating the action.

2 We've not been quite so lucky with the regional

3 board in Rialto, Colton, Bloomington, and Fontana. I think that

4 the current board, and the decisions that they're making, have

5 been dragging this on for quite sometime. It is almost a decade

6 since they identified this plume.

7 If we look at other instances, because I thought,

8 well, maybe the water board deals with it differently than did

9 DTSC, but if you look at Santa Monica with the MTBE plume, it

10 only took them four years to implement the orders, Cleanup and

11 Abatement Orders.

12 In San Martin, it was one year.

13 In Redlands, which Ms. Beswick has pointed to as

14 an example, it only took them three years to implement it.

15 They also, in all of these cases, had responsible

16 parties. Santa Monica was dealing with oil companies, and

17 there's nobody harder to deal with than oil companies.

18 But there's a difference here. This is dragging

19 on 10 years. And in the meantime, there are people who are

20 being delivered water.

21 And the cost of the cleanup and pursuing the

22 responsible parties is being passed on by the City of Rialto to

23 its ratepayers.

24 Now, let's look at some of the differences. If

25 you look at the demographics in Redlands, you have 73 percent of

26 the population is white, with a median income of over $73,000.

27 If you look at Rialto, 36 percent of the people have an income

28 under $35,000, and 63 percent are nonwhite.

It is almost a decade, and this has not been solved. Instead, we have people who are paying a surcharge on their water bill.

I was just talking to a family the other day who was trying to make a decision between whether to pay their water bill or buy their children school shoes. That's what we're talking about.

And I think, although I have absolutely nothing against any of these individuals themselves, I think the composition that was raised with Central Valley, the composition of the boards that are making decisions and trying to address these issues is not representative of the populations in the regions that they are working in.

And I'm not saying that it's a racist thing. I'm not saying that it's classes.

What I'm saying is, the condition of people in Rialto are not the everyday reality for the board members. They come; they deal with it in a report. They deal with it from testimony from time to time. And then they go home, and they can forget about it.

The people in Rialto cannot do that. They are suffering everyday. Water is being delivered to them that is above the only standard, legal standard, that we have in the United States.

I think what we're asking for is some equal treatment. If we can do it in Santa Monica, we can do in San Martin, we can do in Redlands, we can do it in Rialto. And the people deserve the same treatment that all the other cities are

1 getting.

2 I'm not asking that you turn down these three

3 candidates because this water board needs a quorum. We still

4 have three vacancies that have not been filled by the Governor.

5 It is critical. We've had numerous meetings in which one board

6 member leaves for one reason or another, we don't have a quorum,

7 and the board can't conduct business. That's outrageous when

8 we have such critical issues to be addressed.

9 We are asking that the board take the opportunity

10 in October, when Goodrich's agreement comes to an end, and to

11 immediately issue a strong Cleanup and Abatement Order, just as

12 they have done in Redlands and other places.

13 The people of Rialto, the people of Colton, the

14 people of Bloomington deserve no less.

15 Thank you.

16 SENATOR CEDILLO: Ms. Newman, so you're not

17 asking us to reject them?

18 MS. NEWMAN: I think if you reject them, then

19 we're really in a situation where there won't be members there

20 to conduct business.

21 I am very discouraged by the actions, or lack of

22 action, that we've seen from the board.

23 We keep getting -- I mean, the first meeting we

24 were able to have with Ms. Beswick took place last week, after

25 they were pulled from the Consent Calendar and told to appear

26 here. Before that, they had been told that due to the ex parte

27 communications, they cannot meet with anyone.

28 So, we have no information about what their ideas

are, what their commitment is, anything else, because we can't talk with them.

And as you just saw, the attorneys take the lead. And having dealt with attorneys for 28 years, dealing with Stringfellow, we've been to the U.S. Supreme Court over this, 250 major corporations, including Goodrich, I'm real familiar with how attorneys can delay things and create obstacles so that you never get anywhere.

SENATOR BATTIN: You're not suggesting that we do away with the prohibition of ex parte communications?

MS. NEWMAN: No, but I think that there needs to be a little more leeway on what that means. And I think, if I understood right, that the State Resource Board is going to conduct some workshops on what it really means.

I think there's been an over-interpretation of what it means, because last week, all of a sudden, we could talk with the board members.

SENATOR CEDILLO: Let me ask you a couple questions.

Given the circumstances on the Cleanup and Abatement with Goodrich, that scenario, in other words, if you would have been on the board, what would you have suggested? It's a different course of action.

MS. NEWMAN: Well, I think you heard when they pulled the order last year, they entered into another agreement. So, it's not just they got their four million, and then they did some stuff and proceeded. They again allowed it to be drug out another year.

I think at that point, there is enough information. They identified Goodrich as a responsible party in 1998. They know Emhardt is one of them. There's some debate over the assumption of liability from its previous corporate entity, but they still know Goodrich is there. And they have not issued an order against Goodrich.

They keep playing and negotiating these little games to get a little more money, instead of stepping up to the plate, using their authority. They can issue the order. If they're in violation of that order, or refuse to step forward, there's provisions where they can be fined $10,000 a day.

I would guarantee you, any corporate entity, in weighing the money, would step up to the plate and try to find a better way out of this.

SENATOR BATTIN: Next witness, please.

MS. JAHAGUIDAR: Thank you, Mr. President and Members of the Committee, for the opportunity to testify.

My name is Sujatha Jahaguidar. I'm the clean water advocate for Environment California.

I'm here today to express concerns over the record of the current board. And ask that if confirmed, the members, again as stated by Senator Soto, reinvigorate their commitment to accelerate and expand efforts to clean up perchlorate in the Rialto region.

You know, perchlorate, as Senator Soto mentioned, is one of the most pressing drinking water issues facing California today. The City of Rialto, a working class community just an hour east of L.A., is at the epicenter of this pollution

1 crisis because it relies almost solely on groundwater for a
2 drinking water source. And because so many of its wells are
3 contaminated, the City of Rialto is one of the hardest hit
4 communities in the entire country by perchlorate.
5 And that's why the actions of the members of the
6 Santa Ana Board hold such weight. The whole country is watching
7 how aggressively perchlorate is cleaned up in Rialto.
8 Unfortunately, in listening to the testimony thus
9 far, I am not questioning the commitment of the board to do
10 anything on perchlorate. I think that they have taken several
11 steps to address the perchlorate plume.
12 However, the idea that what has been done is
13 enough, or that there has been adequate exercising of available
14 authority, is simply just not true. If you look at what has
15 been -- what is left to accomplish with the Rialto cleanup, the
16 list -- it's overwhelming.
17 There is no containment of the plume. The plume
18 continues to spread as we speak.
19 Two, only .5 percent of the total cost of cleanup
20 has actually been recovered from a responsible party.
21 Third, there is no reimbursement for community
22 members who have been spending their money to fund stop-gap
23 cleanup measures.
24 And finally, nobody can guarantee the community
25 that levels of contamination over the only perchlorate standard
26 set in the country is not being pumped to residents.
27 And so, does that -- do we have this problem
28 because there is just no authority to act on this? Or we don't

1 know who did -- who caused the problem?

2 That's also not true. The board states in its

3 own memo about the situation that two major dischargers of

4 perchlorate at the 160-acre site have been West Coast Loading

5 and Goodrich. In the board's own memos, they are identifying

6 the major polluters in this case.

7 Secondly, the available authority to the board to

8 enforce Cleanup and Abatement Orders, as raised by Senator

9 Cedillo, are maximum fines of 10,000 a day. The board's own

10 memos document only $30,000 in fines collected total.

11 And the rub here is that we're not talking about

12 a six-month period. We're talking about 10 years. So, it's

13 really understandable that the frustration of the community has

14 really reach a point where there was a very fevered debate over

15 whether do we oppose the candidates here or not.

16 Unfortunately, we were able to meet --

17 SENATOR CEDILLO: So, what's the conclusion on

18 that debate?

19 MS. JAHAGUIDAR: The conclusion is that

20 subsequent to a meeting with the Chair, about the end of last

21 week, we have been assured that there will be a renewed

22 commitment to clean up, cleaning up perchlorate in the Rialto

23 community, that those -- that commitment will include the

24 overarching policies of replacement water, of containment of the

25 plume, of maximum enforcements.

26 And if that is the case, if the candidates are

27 able to reiterate that commitment here today, then we will not

28 oppose the opposition [sic]. We will give this board another

chance.

CHAIRMAN PERATA: Thank you.

And I would venture to say that you've made that commitment.

MS. BESWICK: I believe that's fair to say.

CHAIRMAN PERATA: Anyone else?

Unless there's anything new to add, frankly, we understand and will stipulate to the problem.

MR. METROPOLIS: Well, I'm Jim Metropolis with the Sierra Club.

And my colleague's concerns with Environmental California are ours, and we hope they have a renewed commitment to cleaning up the perchlorate problem in the area.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. STROSHANE: My name is Lauren Stroshane. I'm here on behalf of the Environmental Working Group in Oakland.

I will be very brief and just say that we share concerns on this issue.

CHAIRMAN PERATA: Thank you.

MS. CAMORODA: Good evening. Stephanie Camoroda with the Latino Issues Forum, a statewide public policy organization.

And I'd just like to echo the statements made by Penny Newman.

CHAIRMAN PERATA: Thank you.

MS. DAVIS: Debbie Davis, Environmental Justice

Coalition for Water.

We also support the statements that were made by Environment California and Penny Newman.

MR. GUERRERO: Rene Guerrero, with the Planning and Conservation League.

We also share the concerns of the folks that came up here before me.

Ten years. Who knows how many children have been just destroyed by perchlorate?

We hope that the board here will take that very serious and address the issue.

Thanks.

CHAIRMAN PERATA: Thank you.

SENATOR ASHBURN: Do you need a motion.

CHAIRMAN PERATA: We do.

SENATOR ASHBURN: I move to approve the three nominees.

CHAIRMAN PERATA: This is a big issue. The Senator has been working on this since the time I first met her, when she was a small child.

[Laughter.]

CHAIRMAN PERATA: But doing diligence, it is very unfortunate that major -- I've never heard of West Coast Loading, but I've sure as Hell heard of Goodrich -- it is vexing that responsibility is so hard to pin down and then prove.

I just encourage all of you to continue working at it. I know you're volunteers. The fact that one of you had personal experience with it, and everybody else is very aware of

it, is, I think, reassuring.

So, we also would benefit greatly within the parameters of whatever your lawyers say you can do, you should let us know through your representative.

I mean, there are things that you need in order to do the work that needs to be done on behalf of the community. You should come to the Legislature and talk to us. I mean, that's a role that is too often not played by members of regional water boards. But nobody will know any better, and there's a lot of advocacy out there of people who are, in some cases, advocationally committed themselves in the same way you have.

But if you bring that to us, you can really add to the value of that kind of advocacy, and I would encourage you to do that.

With that, I'd ask for an Aye vote. Call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations. Thank you for your patience.

Thank you all for your patience.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 6:20 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of August, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

February 28, 2006

Sopac McCarthy Mulholland
32657 Indian Reservation Road
Porterville, CA 93257

Dear Ms. Mulholland:

As you know, your appointment to the Central Valley Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by March 21, 2006.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Central Valley Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Are state board and regional board staff available to assist you in better understanding some of the complex issues before you?*

3. *Do you have any suggestions on how staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

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The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

6. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater. In the past these permits have imposed best management practices on dischargers under the assumption that the use of those practices will result in water quality improvements. However, there is increasing evidence that best management practices do not always adequately protect water quality. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

7. *What is your view about the efficacy of relying on a voluntary system of "best management practices" to protect the state's waters against polluted stormwater?*

8. *Would the use of numeric limits in stormwater permits be an improvement over permits that rely on "best management practices?"*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Hilmar Cheese Company, located in Merced County, is the largest producer of cheese in the world. Over the last fifteen years the company has been exceeding pollution limits set in its waste discharge requirement permits. Instead of enforcing the pollution limits, the board raised the amount of pollution allowed four times between 1990 and 1997. In 2005 the company was fined $4 million. Later the board staff negotiated a proposed $3 million settlement; Hilmar would admit no wrongdoing, and the company would be allowed to continue to pollute until sometime in the future when both sides could agree to new pollution restrictions. This settlement and two other option are still before the board.

9. *What is the status of the enforcement action against Hilmar Cheese Company?*

10. *What enforcement options do you believe provides the most effective tools for long-term violations of permit requirements?*

11. *It took 15 years for the enforcement of the company's pollution limits to rise to the level of a fine. How will you prevent that situation from occurring in the future? Is change needed?*

Agricultural Waivers

Current law requires regional water quality control boards to issue requirements on discharges of both point and nonpoint source pollution in order to protect the waters of the state, unless those requirements are waived pursuant to Section 13269 of the Water Code. That code section states that waivers from discharge requirements can be made if it is "in the public interest," a criterion that has been used in a number of different ways over the years. The agricultural waiver in the Central Valley has been among the state's most contentious.

The Central Coast and Los Angeles regional boards have adopted agricultural waivers that appear to be more transparent and that generate more publicly accessible information. The Central Valley board rejected a staff recommendation that would have made the agricultural waiver more closely resemble waivers of these other two boards. We would appreciate an update of your board's agricultural waiver.

12. *Would you explain the refusal of the Central Valley regional board to support the staff recommendation and would you explain how you voted on this question and why?*

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

13. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal stormwater permit programs and total maximum daily load programs.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

14. *What schedule currently exists at the regional board for TMDL development? Is the schedule being met and if not, please specify what aspects of the schedule are unmet? What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

15. *What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814

Thank you for your time and cooperation.

Sincerely,

DON PERATA

DP:KW:dc

March 20, 2006

Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol
Sacramento, Ca
94814

Dear Ms. Sabelhaus,

You will find below my answers to the questions posed by the Senate Rules Committee. As a new potential member of the board, many of my responses are based on limited experience and knowledge. This will change soon; I am a quick study.

1. I firmly believe that water quality, while our task to protect and certainly the center of our focus, must fit within a larger spectrum of balanced concerns. I hope to increase the consideration of all relevant concerns in our decision making.

My diverse background makes me a stakeholder in a variety of groups (conservationists, ranchers and farmers, developers and economic development interests). I hope to assure that all positions find ways to communicate their view points. Currently, many stakeholders do not believe that their interests are being considered. The individuals who have the luxury to afford to travel to Sacramento and spend two days during testimony do not necessarily represent the true spectrum comprising each stakeholder group. Working with staff to expand their working groups and also working to broaden the ease of public participation is high on my priority list.

2. Both the regional board and state board staff have been available to me.

3. I would appreciate staff presenting data from a wider source of experts. I clearly recognize the resource constraints presently pressing on every state and regional staff member and I do not know as yet how and if these needed resources can be made available.

4. I have met with both Phil Wyels and Francis McChesney for a lengthy orientation in conflict of interest and ex parte communication. At present I have been asked to recuse myself from the Board on any issues relating to the irrigated lands' waiver.

5. I have met with one staff member and with the Board Chair for the state board. I see that the state board intends to increase the dialogue between the state and regional boards. I think this is a very good thing and I look forward to our joint meeting in early April. I anticipate the opportunity to discuss further coordination, accountability and transparency in budget process.

6. I do not believe that the regional board is adequately funded. Our new EO has promised to evaluate current staffing levels, workloads and financial needs. This analysis will help all of our board better assess our shortfalls.

7. Although "best management practices" provide the most economical way to implement standards, we cannot expect them to work in all instances. Most permits rely on the honor system which is really the implementation of "best management practices". We do not have enough money in the world to police all activities which is why we must depend upon general compliance with our laws and concentrate our enforcement efforts where they are most needed and will provide the biggest incentives for other parties to apply "best management practices". We must implement monitoring where it is most economically and technically feasible and enforce "best management practices" whenever possible.

8. I believe narrative limits would provide the best standards. Numeric limits can be too prescriptive in fields where we really do not have the availability of exact science or the technical tools for exact monitoring. I understand that there is a blue ribbon committee currently studying numeric limits. I will be interested to see whether they find numeric limits as either feasible or appropriate.

9. Last week at our Regional Water Quality Control Board Meeting the Board voted to support the settlement agreement worked out by staff and Hilmar Cheese. I voted for the settlement agreement and enthusiastically support the money being put forward for the SEP study.

10. Having a permit with measurable, clear expectations and clearly defined time schedules provides an effective tool for enforcement. Frequent inspections with both sides considering all available options are key to resolution. Fines should follow when infractions are deliberate and available options have not been utilized by the cited party.

11. In the case of Hilmar Cheese Company, their compliance required a technology that is currently unavailable. Shutting down the world's largest cheese producer for infractions that they could not rectify, to me flies in the face of sound economic decision making. As soon as it was determined that current technology could not allow Hilmar to meet the standards, a research requirement should have been implemented. Fines are punitive; they do not solve problems. I want to solve problems.

12. At present I have been disallowed from participating on this action item. I do believe however, that enforcing non point source pollution in the foothills of the central valley would be impossible. In the investigation of my conflict of interest, I have learned more about what constitutes a discharger. My conjecture is that every property owner of over 2.5 acres would be a discharger due to storm water sediment. Unless someone has a direct line to Mother Nature, I believe monitoring and enforcement of the provisions as currently defined is a practical impossibility.

13. We need more funds for studies, monitoring and enforcement. We need coordination and cooperation with the irrigation districts in the central valley. We need closer alliance with other agencies. We need to work with the farmer consortiums. We need to allow for ag waivers where appropriate. Staff believes that a coordinated data base needs to be funded. During and after the gathering and creation of needed data, the data base must reside in one central location. With this overarching data base coordinated, inter agency monitoring could occur and results could be shared.

14. CVRQCB has a schedule for TDML's which is attached. The TDML program is extremely complex. When the regional board first began the program, it fell behind due to the need to obtain expertise on policy issues and to complete the complex process. Staff still feels overwhelmed and under funded and lacking in sufficient expertise. Until we can resolve some of these issues, I doubt that staff will be able to catch up and stay caught up in the near future.

15. I will assume that this question relates to identifying pollution loads. The data base discussed in question #13 would certainly aid agencies in their ability to identify existing pollutants as well as to identify areas where no monitoring has occurred. This data base could also become the focus for coordination.

    I have worked with DWR and Cal Fed before and I believe they also have a role in identifying pollutant loads and in seeking clean up. If several agencies work together, larger scale and more impactful solutions may be possible. I do not know how to force other agencies to meet their responsibilities. I am a consensus builder.

Thank you for this opportunity to respond to your questions and in so doing clarify, in my own mind, areas where I need to learn and areas where I have expertise to bring to the board.

Sincerely,

Sopac McCarthy Mulholland

TMDL Schedule and Completion Dates
10 March 2006

In general, delays can be attributed to the fact that the TMDLS that we are working on are complex and involve large watershed with many dischargers and discharger types. It was difficult to predict how much time and effort it would take to do the science right and meaningfully involve stakeholders in the process. We are getting better at prediction and we are working through the TMDL roundtable to implement a comprehensive improvement strategy.

FY 2000
- Grasslands Selenium – Promised April 2000 – Submitted June 2000
- Salt Slough Selenium – Promised April 2000 – Submitted June 2000

FY 2001
- San Joaquin River Selenium – June 2001

FY 2002
- Sacramento River Copper, Zinc, Cadmium – Projected date June 2001 – Adopted April 2002
- Clear Lake Mercury – December 2002

FY 2003
- Sacramento and Feather River Diazinon - Projected date June 2003 – Adopted October 2003
- Sacramento Urban Creeks (several TMDLs) – Projected date December 2003 - Approved June 2004

FY 2004
- San Joaquin River Salinity and Boron – Projected date June 2003 – Adopted September 2004 – delays due to need for extended public outreach
- San Joaquin River Dissolved Oxygen – Projected date January 2005 – Adopted January 2005

FY 2005
- Cache Creek Mercury (Harley Gulch, Bear Creek) – Projected date January 2005 – Adopted October 2005 – required additional stakeholder involvement
- Delta and other water bodies organochlorine pesticides – Projected date June 2006
- San Joaquin River Diazinon and Chlorpyrifos – Projected date June 2003 – Adopted October 2005 – delays due to staff changes and Sacramento/Feather River lawsuit on diazinon objectives
- Clear Lake Nutrients – Projected date June 2006 – Scheduled for June 2006

FY 2006
- American River Mercury – Projected date January 2007

- Delta Mercury – Projected date January 2005 – Scheduled for June 2006 but will be delayed – delays due to need for extended discussions on how to address concerns with wetland discharges and coordination with Region 2 mercury TMDL
- San Joaquin River upstream from Stanislaus Salinity and Boron – Projected date June 2006 – delayed to December 2006 because of delays in approval by State Board of downstream salinity TMDL
- Delta Diazinon and Chlorpyrifos – Projected date June 2004 – Scheduled for September 2006 – dependent on completing San Joaquin River diazinon and chlorpyrifos TMDL

FY 2007 and beyond
- South Delta Channels Dissolved Oxygen –
- Sacramento and San Joaquin Basin Pesticides –
- Stockton Area Sloughs and Rivers –

Bob Anderson
North Coast Regional Water Quality Control Board

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board?

Answer:

The North Coast Region covers a large area representing a diverse landscape with many and varied interests. My goal is to do the best I can to protect its resources and encourage a strong conservation ethic by those who own and manage its land. The issues in any given month will vary from timber to stormwater permits and TMDLs to enforcement actions. The role I can best perform as a new board member is to ensure the record created by the Board's deliberations is one that is full, fair and complete.

2. Please describe the actions your Board is taking to address the water quality issues in Freshwater Creek and Elk River. What is the timetable for resolving these issues?

Answer:

After several days of hearings, involving presentations by the designated parties, the Board earlier this year settled on a course of action to address water quality issues in Freshwater Creek and Elk River. Though not fully embraced by all sides, the decision the Board made confirms the need to protect water quality in these watersheds as well as established a clear course for moving forward. Implementation of the Board's action is being handled by agency staff.

3. What is the current status of this backlog in your region?

Answer:

It is my understanding, from the previous year's backlog of 21, the current backlog has been reduced 43% by a combination of permit renewals and rescissions.

As of the start of FY 06/07, the agency's total number of NPDES individual permits was 52. The current backlog tallies to 13 (25%) representing some very large permits, some complicated permits, a General Permit for construction and several cleanup actions.

Through the end of FY 06/07, there are a number of expired permits working their way through the process. The backlog by the end of 06/07 is expected to total 8 out of 49 (16%).

Senate Rules Committee

AUG 04 2006

Appointments

4. Please describe the status of your Board's TMDL process. Does your Board have adequate resources to develop and implement the required TMDLs?

Answer:

Twenty TMDLs, each covering an entire watershed, have been adopted for the North Coast. All of these TMDLs are designed to control non-point sources of pollution basin-wide. The agency does not have enough staff to implement these already adopted TMDLs. Currently, the agency's efforts are being focused on a comprehensive program to implement the TMDLs for the Garcia, Scott, and Shasta. In the remaining 17 watersheds, we must take a piece meal approach due to funding constraints. Next in line is a TMDL for the Klamath which will undoubtedly be controversial and may require additional time and effort.

5. What is your view of what drives up the costs of developing and implementing TMDLs in California?

Answer:

Implementation of our TMDLs is more expensive because each TMDL covers an entire watershed; this means each TMDL covers a lot of land and affects nearly everyone within the basin. Obviously this kind of TMDL is more costly to produce and implement than one done for a segment of a river. Most TMDLs produced nationwide cover only a portion of a river.

We have taken a different approach because the pollutants we are trying to control are not contained in a central location instead are spread out across the landscape. For example, in order reduce stream temperatures, it is necessary to look at the entire stream. To reduce sediment loads, all large anthropogenic sediment discharges in the basin must be controlled.

The goal is to end up with a plan that works – for the agency and the local community. The Board's challenge is to convert an understanding of the science into actual practices that, if properly applied, will result in a real difference in the watershed.

6. Once a TMDL is adopted, what steps should the Board take to ensure compliance?

Answer:

To accomplish its objectives over time, each TMDL needs to include an achievable means for measuring progress and to have those assessment protocols and benchmarks easily accessible to the community. Once adopted, they need to be reviewed periodically. I anticipate the Board will be receiving annual updates that will afford all in the community the opportunity to comment on the presence or absence of progress.

7. What is your view of this criticism? Do you believe that this TMDL describes enforceable actions that are in compliance with Section 12342 of the Water Code?

Answer:

The Board believes that the Scott TMDL is fully compliant with section 13243 of the Water Code. However, the SWRCB has requested our staff to bring to us a conditional waiver for the Scott River in August 2006. The conditional waiver, which is really more of a permit, is scheduled for adoption on August 9th. If the Regional Board adopts the conditional waiver any previously existing ambiguity on this subject will be eliminated.

The forty year time horizon for the compliance schedule is tied to restoring riparian shading along the stream and is a function of the time it will take for trees to grow.

8. Is the voluntary approach to TMDL's sufficient or should mandates be included to assure compliance?

Answer:

It is my understanding the SWRCB NPS Enforcement Policy has eliminated the use of a voluntary approach to implement TMDLs.

9. How many community sewage systems are not in compliance with water quality laws?

Answer:

After the establishment of a formal enforcement unit within the agency last year, it has followed that the agency issued mandatory minimum penalties (MMPs) to most of the communities in the North Coast Region. It is my understanding the backlog of MMPs has been cleared up and work is beginning on new cases related to sewage spills and illegal sediment discharges

10. Has the mandatory minimum fine requirement moved communities into compliance?

Answer:

Our perspective of the positive and negative impacts of MMPs comes from our experience with North Coast communities, which for the most part are small communities with financial hardships. Imposing MMPs of $3,000 per violation has a disproportionately higher impact on a small community than it does on a larger community with a larger rate payer base even though the effect on water quality is the same. We believe that it would be appropriate to look at this inequity. On the positive side, MMPs have forced communities to pay close attention to their wastewater systems. This has significantly improved compliance and reduced violations.

11. What can the Board do when a community cannot afford to upgrade its sewage system?

Answer:

This issue comes up often. The Board asks the community to bring its wastewater connection fees and user charges up to par with what other communities charge its users.

The Board adopts enforcement orders with time schedules for completion of improvements. Time schedules establish milestones for communities and the Board to measure and evaluate progress. Enforcement orders and time schedules can have penalties attached to them as an incentive to comply. Enforcement orders also elevate communities on eligibility lists for grants and loans.

Staff can assist communities with Small Community Grant Assistance and State Revolving Fund programs and funding programs administered by other state and federal agencies.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
YEARLY CONFLICT OF INTEREST FORM

FOR MEMBERS OF THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD AND
REGIONAL WATER QUALITY CONTROL BOARDS

Name *Please type/print*	BOB ANDERSON
Phone Nos.	Home: 707 433 7319
	Work: 707 484 3719
Region	NORTH COAST

1. During the period January 1 through December 31, 2005, or January 1 through December 31, 2004, my spouse or I have received income from persons who have applied for or been issued an NPDES permit in California.

   ☐ Yes ☒ No

- IF you answered "yes" to question 1, complete items 2, 3, and 4 of this form.
- IF you answered "no" to question 1, complete item 4 only.

NOTE: Persons includes individuals, partnerships, corporations, trusts, cities, counties, and special districts. Nearly 13,000 facilities have NPDES permits in California. To determine if a source of income comes from a permit holder, please contact the State Water Resources Control Board's Office of Chief Counsel at (916) 341-5161. You may also consult the State Water Board web page at http://www.waterboards.ca.gov/swim/index.html for a partial listing (select the link for "All Active NPDES Facilities").

NPDES permits include areawide storm water permits for discharges from storm sewer systems as well as general permits regulating industrial and construction storm water discharges.

Income includes, but is not limited to, salary, stock dividends, consultant fees, and proceeds received from individual municipal bonds and retirement benefits. Income may also include spousal income in appropriate cases because California is a community property state.

2. During the period January 1 through December 31, 2005, or January 1 through December 31, 2004, my spouse or I received income from the following persons who have applied for or been issued NPDES permits in California:

_____ _____

_____ _____

_____ _____

_____ _____

CALIFORNIA LEGISLATURE

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 23, 2006

Carole H. Beswick
315 West Mariposa Drive
Redlands, CA 92373-7233

Dear Ms. Beswick:

As you know, your appointment to the Santa Ana Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by July 17, 2006.

We would also like to receive an updated Form 700, Statement of Economic Interest by July 17th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Santa Ana Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*

STATE CAPITOL • ROOM 420 • SACRAMENTO, CALIFORNIA 95814-4900 • (916) 651-4151 • FAX (916) 445-0596

3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements, and state and federal water quality laws. Regional board budgets are not reviewed individually by the governor or the Legislature, and most regional board staffing decisions are made at the regional level not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board, instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

5. *Do you believe the regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from storm water. In the past these permits have imposed best management practices on dischargers, under the assumption that the use of those practices will result in water quality improvements. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

6. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*

7. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

8. *In what specific ways might your regional board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

10. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and total maximum daily load programs.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

11. *What schedule currently exists at the regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

12. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Perchlorate Groundwater Contamination

Perchlorate contamination of groundwater has been found at a number of Department of Defense and defense-related sites. Perchlorate has contaminated the municipal water wells of Colton, Rialto, and Norco. In addition, there are problems related to perchlorate levels found in Colorado River water that is imported to Orange County. This drinking water contains approximately 4-8 parts per billion of perchlorate – the current public health goal is 6 parts per billion. Some water districts blend nonperchlorate contaminated water with Colorado River water to levels below the public health goal; however, the Orange County Water District does not have blending facilities.

13. *Are any other drinking water sources affected by perchlorate contamination? Is replacement drinking water necessary for residents and is it being provided?*

14. *What steps is your board taking to address the perchlorate problem? What type of monitoring and groundwater treatment have you ordered?*

Leaking Septic Tanks

In February 2005 local officials met to discuss high bacteria levels in Canyon Lake which had been closed for recreation for four months. The following June the Santa Ana board officials stated that a ban on septic tanks might be required and that a sewer system might need to be installed for Quail Valley. That December, Riverside County and the Santa Ana board recommended that new septic systems continue to be allowed until a new $70 million sewer system was built. Recent newspaper reports indicate the board may reverse its December decision and institute a ban on new septic systems in certain Quail Valley areas in the next several months.

15. *Has it been established that leaking septic systems caused the high bacteria levels in Canyon Lake? What is the current status on the construction of new septic systems for Quail Valley?*

16. *Does your board still believe that septic systems can continue to be built until a sewer system is constructed or is some type of ban being considered?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your time and cooperation.

Sincerely,

Don Perata

DON PERATA

DP:KW:dc

1. The primary goal for me, as a member of the Santa Ana Regional Water Quality Control Board, would be to have an impact on the quality of water available to citizens of our region, whether it be for consumption or for recreation. We face challenges on many fronts, and I would very much like to see meaningful progress made as we confront contaminants in drinking water, areas with inadequate sewage systems, environmental contaminants with no current technology available to remediate and the continuing need to address TMDLs. To accomplish the work of our region takes the commitment of time and resources of the board and staff.

2. Our Board receives excellent support from our regional board staff, particularly as we deal with complex issues. Our agendas routinely include staff reports on the issues facing our region that are based in science, yet appreciate the social and economic realities of our Region. As to the State Board, I appreciate the monthly interaction I have with the State Board Chairman and the chairs of the other regional boards. This provides insight into the "big picture" and allows an exchange of ideas, on an ongoing basis.

   The State Board Office of the Chief Counsel is essential to our work on complex legal issues, and they are accessible and responsive.

   One challenge that continues to confront our board is the need to fill all the Board's seats. We are frequently confronted with quorum issues, and while I know this is not something the State Board can "fix", we would appreciate any assistance we can muster in having a full board. At a recent meeting we unavoidably lost our quorum and were unable to take action on a sensitive item.

3. Upon my appointment to the board, I participated in a meeting with the SWRCB Chief Counsel that clearly outlined the rules governing Board Members as to conflict of interest. Then, most years, at the Water Quality Coordinating Committee, we are updated and refreshed as to these rules. This training makes it possible to recognize where a conflict would exist, leading to the need to withdraw on an item before the board. If I have any question about the need to withdraw, I have consulted with legal counsel. I do not believe I have had to withdraw since being appointed to the board.

4. I believe the overall relationship between the state board and our regional board is good. There is always room for improvement. Communication seems to be the key, and there is more going on now than there has been since I became a board member. What this improved communication reveals, through the monthly chair's meeting, is that we continue to have diverse issues to address throughout the state, which challenge the ability to have "consistent statewide policies."

Senate Rules Committee

Beswick , Page 1

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Appointments

While I understand there is criticism from both sides on many issues confronting the state and regional boards, I think the processes in place work well. The issues are complex and widely varied, and speaking from our region's perspective, we make every effort to be accessible, "transparent" and accountable.

As to budget issues, I prefer the current method of budgeting that does not pit region against region, such as we would expect to see with individual regional board budgets.

5. The simple answer is no, we are not adequately funded. In particular, our region faces two major challenges that require a large portion of our available funding resources. The urgency of these two areas (perchlorate in the groundwater in the Rialto/Colton area and septic system failures in Quail Valley) has made it difficult to balance all the water quality issues that confront our region. We would be able to do much more, and faster, with enhanced financial resources. This impacts the second part of this question. We find that our staff is falling behind in addressing TMDL matters, as they are impacted by the scope of work facing our region.

6/7. As this time, the use of BMPs is the only practical approach to effectively govern storm water discharges. A look at all of the control approaches in place reveals how difficult it could be to effectively apply numeric standards, i.e. erosion control, sediment control, illicit discharge elimination, covering chemical and material storage areas, etc. While numeric limits might be a reasonable alternative, I believe we need to allow the BMP program to mature and then revisit this question.

8. Our regional board could improve on its enforcement activities, only with more personnel. We currently have 6 ½ FTE dedicated to the perchlorate contamination in the Rialto/Colton basins and 1 FTE dedicated to Quail Valley. The region also has an Enforcement Unit staffed with 5 persons which is responsible for tracking, prioritizing, investigating and prosecuting enforcement cases in the region. So truly, without additional financial resources for the addition of staff, I don't know what else we could be doing.

The board receives reports of staff's enforcement practices, from time to time, at our meetings. Further, most months, we receive reports from the executive officer as to enforcement actions taken.

9. The number one "motivator" for violators would seem to be administrative liabilities. Our board has found these to be efficient, fair and compelling. They result in the implementation of corrective actions to avoid the assessment of civil penalties in the future for continuing violations. We have certainly found this to be the most effective of tools.

10. The preamble to this question is spot on...monitoring activities at the state and

local levels ARE "chronically underfunded". We are fortunate in our region, in that we have an excellent monitoring network, which is funded by the water supply and discharger community stakeholders. An assessment is done every three years, which uses a comprehensive data network and soundly based scientific processes to give "real-time" groundwater quality data, which is then matched up to water quality standards. A similar process exists for surface water quality monitoring, and it occurs annually. I believe our region is very effective in this area, and has been astute in having stakeholders fund the work. Certainly, monitoring needs to be a high priority for regional and state boards, but again, it is clearly a matter of needing adequate funds to do the work.

11. Our board has taken the position that TMDLs based on sound science makes for the best rule making. Conclusions based on science take time and can result in schedules not being met. While it is our goal to be very conscientious in developing and implementing TMDLs, we strongly believe that doing them well is usually better than doing them fast. TMDL development is a costly process, and the public deserves to have these funds spend on sound science. Our staff knows that TMDLs are high priority for us, and they are acting accordingly. Sadly, the problem is once again one that could be expedited with greater funding.

12. Clearly, to fully implement TMDLs, their requirements must be included in both waste discharge requirements and the basin plan updates. In our region, we include these requirements in individual waste discharge permits, general waste discharge permits and in basin plan provisions. All of these steps get us closer to fully implementing TMDLs. Other agencies most certainly do share in the responsibility for this, and we look to cities and counties to implement and enforce these regulations, as well. Yet, we do lag behind our adopted schedules and it is something of which we are mindful, as is our staff.

13. Yes, many water sources are affected by perchlorate! Both San Bernardino and Orange counties feel the effects of the citrus industry that utilized natural Chilean fertilizer on a wide spread basis, beginning in the 1880's. Unfortunately, this Chilean fertilizer contained perchlorate. We also are heir to some war-related sites from the mid century that have left us with significant perchlorate problems. At this time, "replacement" water is provided by well-head treatment, which is maintaining drinking water at a concentration that is within State Department of Health Services guidelines. Therefore, residents in the Rialto area are being provided with a water supply that is better than the goals set by the state. However, we must absolutely be prepared to require replacement water should it become necessary, as we recently did with the perchlorate discharge from San Bernardino County property. Our board has maintained, from the outset of addressing this problem, that protecting the drinking water in our region's communities is the number one priority.

14. To answer this question adequately would require far more than can be addressed in a paragraph or two. Our board has required the investment of millions of dollars in state-of-the-art monitoring wells, both at the perchlorate

discharge site and down gradient of the site. This information is vital to preparing a comprehensive, effective remedial action plan and to provide a long-term solution to this critical groundwater problem. Characterizing the plume as to its width, length and depth must be accomplished for effective treatment and to ultimately stop the spread of contamination. Soil, groundwater and soil vapor tests have numbered in the thousands, generating an immense database. Progress is being made in the cleanup of the contamination. Since 2002, 10 of the 22 wells that were shut down as a result of detecting perchlorate have been equipped with perchlorate removal treatment. Nine of these wells are currently in operation, removing perchlorate from the groundwater and restoring these water sources as a safe drinking water supply. There is much more to this effort, and our regional board staff would be more than willing to brief the Committee in greater detail. Hopefully this will give a snapshot of our efforts.

15. It appears that failing septic systems is one of the sources of high bacterial levels in Canyon Lake. The current status of construction of new septic systems in Quail Valley is that it is a work in progress. Riverside County needs to make this a priority and meanwhile, our board will hold it's second meeting in Quail Valley in August. There is lots more to come on this issue

16. The answer to this question seems to be maybe and yes. Our regional board staff and Riverside County's Environmental Health staff are reviewing the challenges of this area: very rocky soil, with inadequate subsurface soil conditions; very small, very dense lots; some lots where septic systems could work; and the threat of failure of systems in heavy rains. The solution is expensive and not currently funded. Work is ongoing to coordinate between agencies for engineering and funding. At the hearing in August, our board will likely be asked to enact a basin plan amendment prohibiting septic systems in Quail Valley, until a solution can be put in place.

MARY CRAMER – ANSWERS TO QUESTIONS REGARDING CONFIRMATION TO SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

1. **STATEMENT OF GOALS WHAT DO YOU HOPE TO ACCOMPLISH DURING YOUR TENURE....**

My hope for the coming term encompasses the idea of agriculture working together with this governing agency to find solutions to problems. As the Irrigated Agriculture Member of the Board, I am aware of so many of the day-today problems which plague and pester the good people who provide the food we eat, and the flowers and trees we enjoy. A synergy in problem- solving has always been my desire, although now as a member of the board, I am able to see that staff already does an excellent job of working with the various people involved. In that manner, I will hope to promote cooperation from the agricultural community and the Regional Board.

2. **DO YOU RECEIVE ADEQUATE SUPPORT FROM THE STATE BOARD AND THE REGIONAL BOARD STAFF TO ASSIST YOU...**

The State Board holds workshops (which I have attended just 1) twice a year where all the regional boards are supposed to attend. This was a very interesting experience for me because it gave me a change to see how other Board Members respond to certain issues which come before them, and really, a protocol for the meetings. I found that experience very helpful to me as a new member of the Board.

As for the Regional Board staff, we communicate on issues throughout the month through e-mails, and any special questions which I may have on the upcoming agenda I usually bring up with the top staff. For example, for my first meeting, our EO, Jerry Thiebault, met with me to show me the agenda, and update me on important issues which face our Board. The support is excellent, just ask for it.

3. **WHAT TRAINING HAVE YOU RECEIVED TO HELP YOU BETTER UNDERSTAND CONFLICT OF INTERESTS....**

I received an extensive session with Jorge Leon, Board Counsel, and another attorney representing the State, regarding issues which could be considered a conflict of interest to ourselves as Board members, and also as voting members previous to my first meeting of the Board. I would know to withdraw myself from voting on an issue which might directly or indirectly cause me any financial gain or loss, or on any issue which might do the same to my husband. I have not ever done so since being appointed to the board, as it has just been a short time since my appointment.

4. **WHAT IS YOUR VIEW OF THE RELATIONSHIP BETWEEN THE STATE BOARD AND YOUR REGIONAL BOARD.....**

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From my limited experience, I would view the relationship between the State Board and the Regional Board as being one of "Board above our Board", and the State Board being the area board. I have such limited experience here on the political relationships of the two boards, other than the parent board (the State Board) having a higher level of enforcement. The only issue I would mention in Budget Allocations, is that our board is sorely missing board members, and if that is a budget issue, more monies should be allocated so as to make the meetings go smoother. It is difficult to operate without a quorum, or just be at one over.

5. **Do you believe the regional board is adequately funded to enforce the state and federal laws?.....**

According to dialog with staff, an analysis by the Legislative Analyst found the regional boards to be funded for only about 50% of what is needed to properly perform all board activities. Therefore, the board has to make choices according to priority items.

6. **What is your view about the efficacy of relying on best management practices to protect the state's waters.....**

Agencies depend on best management practices to protect against polluted storm waters, this is responsible management for those affected. Numerical limits would mean monitoring devices and reporting, etc., would prove more costly, and difficult to enforce. Responsible efforts including source control, discharge containment or elimination, good housekeeping, swales, sediment control, and even good old fashioned sandbags can prove to be responsible. It is the idea of making the people responsible that is worth monitoring.

7. **Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on BMP....**

It is very difficult to answer this question since it is related to the previous one. Which would be preferable, or which could be more enforceable? I believe best managment practices is most enforceable, as there is not enough staff to enforce numerical limits.

8. **In what specific ways might your regional board improve on the manner in which it enforces water quality laws?....**

Our board might be able to improve on the manner in which it enforces water quality laws it if had more personnel to do it. We are understaffed, as I understand it, to be able to monitor the smaller violators, due to some very large issues which come under our jurisdiction (perchlorate problems in our region)and take a good percentage of our resource personnel.

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9. **What enforcement options do you believe provides the most effective tools for violations of board orders?....**

The administrative civil liability tool is the most effective of the board's tools. This law provides for cleanup and abatement orders, cease and desist orders, and time scheduling orders. In most cases these fines can be levied for violation of permits or other orders.

10. **What monitoring activities occur with the board's jurisdiction that are conducted by private dischargers....**

Our region has an excellent monitoring network, funded by the water supply and discharger community stakeholders within the region, who do a complete regional groundwater quality assessment every three years. Our surface water quality monitoring network evaluates and reports on surface water quality on an annual basis. I am not certain if this effort exists in other parts of the state, but one thing is for certain, monitoring activities are very much underfunded, thus effecting the efficiencies of monitoring staff.

11. **What schedule currently exists at the regional board for total maximum daily load development?...**

It is my understanding there is a major staff effort underway to develop and implement TMDLs in the shortest possible time. With the available resources, and the importance of doing the job correctly, the schedule is what it is.

12. **What steps would you take to implement total maximum daily loads?...**

The most important steps in implementing TMDLs is to include them both in waste discharge requirements and the updates of the basin plans. In this region, these plan requirements have been included in individual waste discharge permits, general waste discharge permits and in basin plan provisions.

13. **Are any drinking water resources affected by perchlorate contamination?...**

Yes, many water sources are affected by perchlorate. The Inland Empire and Orange County have been major citrus producers since the late 1800s, and the preferred fertilizer was natural fertilizer imported from Chile. That fertilizer contained approx. .1 to .2% perchlorate. Millions of tons of Chilean fertilizer were imported into the region between 1880 and 1940. Add to that the industrial sources in the Rialto/Colton groundwater basins, and this is quite a regional problem.

Replacement water is necessary in those cases where perchlorate concentrations exceed State Dept of Health Svs. Drinking water reporting levels.

14. **What steps is your board taking to address the perchlorate problem?...**

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This board has required millions of dollars of high-tech, multi-completion and Westbay-equipped wells both on-site where industrial discharges took place and downstream where the perchlorate plume in North Rialto has migrated. Thousands of soil, groundwater and soil vapor tests have been required, and a staggering amount of data have been and continue to be generated. Further, cleanup and abatement orders have been issued to the responsible parties, including San Bernardino County, which has also installed a groundwater extraction and treatment system, augmenting the treatment network on the affected downstream public water supply wells. Well-head treatment continues to protect the quality of public water supplies.

15. Has it been established that leaking septic systems causesd the high bacterial levels in Canyon Lake?....

Yes, failing, as it is referred, septic systems in the Quail Valley area are considered to be one of the sources of high bacterial levels in Canyon Lake.

The current status of construction of new septic systems in Quail Valley is that Riverside County staff have increased their level of scrutiny of septic system proposals. So that recurrence of system installations in the fractured rock environment is minimized.

16. Does your board still believe that septic systems can continue to be built until a sewer system is constsructed....

It was originally thought that it might be possible to continue to install closely scrutinized systems in Quail Valley while the sewer system is being designed and constructed. However, as more data have been generated, it seems more likely that the staff recommendation will be that which was presented at the May 8, 2006 public workshop to consider a basin plan amendment for a septic system prohibition in Quail Valley. That recommendation is for the complete prohibition of new septic systems in the high-density areas of Quail Valley. That recommendation is for the complete prohibition of new septic systems in the high-density areas of Quail Valley, but to allow continued septic system installation in areas where lot sizes are adequate and subsurface soil conditions are appropriate. There are significant concerns that it is inappropriate to continue to develop new units on septic systems on the very small Quail Valley lots.

A basin plan amendment hearing to consider the septic system prohibition has been scheduled for the evening of August 14, 2006 in the area of Canyon Lake/Quail Valley. Testimony of all interested parties will be heard, and the regional board will consider the proposed basin plan amendment.

Response to the following questions from Santa Ana Regional Quality Control Board Member Deborah Neev
July 14th, 2006

Also note that there are no changes to my current Form 700

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Santa Ana Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

   The protection of water quality is my highest priority. Water reliability is paramount to the future of California and my goal is to realize steady improvements in water quality efforts throughout the basin as we meet our future growth challenges.

   As an example, issues that are of concern and that I have already encountered include the perchlorate contamination in the Rialto-Colton basins, the need to implement the region's salt management plan, the adverse water quality effects of the use of septic tank/leachfield systems in some areas, and the development of TMDLs for the region using the best possible science as expeditiously as possible.

   In my short tenure I see that scheduling board meetings have been difficult because we need almost everyone on the board to be available, just to have a quorum. This is frustrating because it slows down our process. My one wish at this time would be a request to expedite additional appointments as soon as possible.

State and Regional Board Roles

2. *Do you receive adequate support from the state board and the regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*

   Although I am a new appointee, I have seen State support through the State Board Office of the Chief Counsel who has been very helpful to our Regional Board in providing legal assistance for those cases where functions have to be separated for those staff members who are advising the board and those who are actually prosecuting a case (as with the perchlorate in the Rialto-Colton basins).

Regarding Regional Board staff, they have been very helpful in providing timely information prior to the meetings in our packet as well as preparing very informative briefings and presentations at the meetings. This helps both with understanding the scientific complexity and with the background issues and previous actions taken. This serves not only to create a "record" but is vital to us making informed decisions.

3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

- Briefing by Regional Board attorney and Executive Officer upon appointment of new board members

- On line training by California Attorney General concerning conflicts of interest

- Training at the Water Quality Coordinating Committee by the SWRCB Chief Counsel

Knowing when it is appropriate to withdraw from voting when there might be a conflict of interest comes from the information provided by the training on ex parte and conflict matters provided for each regional board member, as well as ongoing monitoring by the Board's attorney and Executive Officer. I know that if I have any question whatsoever, I will make a call immediately to discuss any potential conflict. To date, I have not had to withdraw myself from voting on any issue,

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operations such as budget allocations that you think would benefit from increased transparency?*

I did have the opportunity to attend my first WQCC meeting. It was clear to me that the relationship certainly varies from region to region. Other than this I have not had much of an opportunity to interact with or experience the state board-regional board relationships, other than the occasional appearance of state board members at our regional board meetings. At the last WQCC meeting, there was a detailed discussion regarding the desire to increase coordination and accountability

overall...and I believe that this did depend on the increasing the manpower necessary to execute this effectively.

Regarding budget transparency, it is my understanding that currently there is one budget for the State Board, with allocations made within that budget to the nine regions. I support this approach and there appears to be adequate transparency. If you are asking about additional funding...there is never enough $$$.

5. *Do you believe the regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

We have been informed by staff that an analysis by the Legislative Analyst found that the regional boards are funded for no more than approximately 50% of what is needed to perform all board responsibilities. Because of this gap staff continues to make choices every day and unfortunately there are times when some matters simply cannot be addressed. I probed staff for specifics in order to address the rest of your question and have been told that for instance, there are many basin planning matters that should be addressed in order to properly update the region's basin plan. There is simply no funding to do most of the work that should be done. In fact, the region's salt management plan was funded by the region's stakeholders who believed they could not wait for state funding to be available to address the regional needs. We also are required to assess mandatory minimum penalties for violations of permit effluent limits. We do so, but only significantly in arrears when many of the violations are quite stale, and in some cases more than a year later when enough violations occur to make the process more efficient with regard to allocation of resources. Also, they are significantly behind in addressing TMDL matters due to funding, staffing and data constraints.

Water Quality Permitting

From the Senate Rules Questions: "The federal and state clean water acts require permits to discharge pollutants from storm water. In the past these permits have imposed best management practices on dischargers, under the assumption that the use of those practices will result in water quality improvements. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply."

6. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*

I think that BMPs are an effective, practical approach that can be taken to address storm water discharges. BMPs include many different control approaches, including source control, illicit discharge elimination, good housekeeping, covering chemical and material storage areas, treatment strategies using vegetated swales or basins, porous pavements, energy dissipaters, erosion control, sediment control, etc. The use of BMPs has become an important part of the Water Quality Management Programs (WQMPs) for all three of our counties, and all new development is required to implement BMPs. The alternative to BMPs is active treatment of storm water discharges. The expense of doing that would be enormous. I feel that we should continue to improve the BMP program, evaluate the effectiveness of the BMPs that have been constructed, and install improved BMPs, if the earlier efforts are determined to be ineffective. In other words, this would be the continuation of the current iterative "best-efforts" approach. In the near future, after adequate time has been given to full implementation of the BMP and WQMP programs, it will be necessary to determine whether it is appropriate to move in a direction other than "best-efforts." Currently, regarding the "efficacy" of BMPs to protect the state's water... they are probably the best approach at this time, given the opportunities for BMPs that are now being constructed to have an effect on water quality, the costs of the alternatives, the difficulty that responsible agencies have to get resources, and the unproven nature of the effectiveness of many of the treatment and control alternatives. All of these uncertainties make it difficult for responsible agencies to guarantee results, and this is necessary for meeting numeric limits. I would rather see all of the agencies continue to move their programs into ever-improving levels of accomplishment, with effective BMP implementation.I think it is important to be consistant throughout the state if at all possible. When this avenue has been fully implemented, and it is found that they may not be as effective as all would like, then numeric limits might be a more reasonable alternative.

7. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

Of course it would. But given the diffuse nature of the sources of pollutants in storm water, it would be very difficult for storm water agencies to be required to meet numeric limits. Also, even with numeric limits, agencies would continue to depend on BMPs to achieve those limits.

Enforcement of Water Quality Laws

The preamble to questions 8 and 9 is: "In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators."

8. *In what specific ways might your regional board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

In this region, enforcement efforts are skewed by the efforts to enforce against the parties responsible for the perchlorate contamination of groundwater in the Rialto/Colton basins. In that case, one very large staff enforcement efforts takes up more than 5% of the region's total resources. This is a very significant enforcement effort in our region and is of the highest priority.

To address other enforcement priorities, the region has established an Enforcement Unit, dedicated solely to enforcement activities in the region, and staffed with 5 persons. This unit is responsible for tracking, prioritizing, investigating, and prosecuting enforcement cases in the region. Much of the effort of the Enforcement Unit is directed towards collaborative case prosecution by the local district attorneys, and participation in the efforts of the local county environmental crimes task forces. This cooperative approach with other local and state agencies leverages the regional board resources for enforcement. Of course, this belies the statement in the above preamble about not seeking criminal penalties.

We should explore how we can address additional efforts without diversion of resources from other board programs.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

It seems that administrative civil liabilities are the most effective of the board's enforcement tools. These can be issued by the Executive Officer, and if they are resolved, there is no need to hold a board hearing. This allows a matter to be handled much more efficiently and timely. The law also provides for cleanup and abatement orders cease and desist orders, and time schedule orders. However, most violations do not require long-term corrective actions, as is contemplated by most of the other enforcement orders. In most cases, administrative civil liabilities can be levied for violations of permits or other orders, and that action

results in the implementation of corrective actions to avoid the assessment of civil penalties in the future for continuing violations.

Water Quality Monitoring

Preamble to Question 10: "Water quality monitoring can provide the basic data necessary to determine the health of state water and to establish priorities needed to improve water quality. Yet this activity seems to be chronically under funded at the state and regional water board level."

10. *What monitoring activities occur with the board's jurisdiction that is conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

    It is my understanding that both statewide and regional monitoring activities are absolutely "chronically under funded." This is both with respect to staff resources and monitoring resources.

    With respect to this region, we have an excellent monitoring network, funded by the water supply and discharger community stakeholders within the region who do a complete regional groundwater quality assessment every three years, utilizing a comprehensive data network and a rigorous scientific process to produce what could be considered to be real-time groundwater quality data for comparison with water quality standards. In fact the data from this effort has brought the salt issue to the forefront of our attention. Further, our surface water quality monitoring network evaluates and reports on surface water quality on an annual basis. This monitoring effort is also funded by the stakeholders in the region.

    However, this level of effort does not occur anywhere else in the state, and the funding for state monitoring must be significantly increased, in order for an effective monitoring network to be implemented on a statewide basis.

Cleanup of Polluted Waters

11. *What schedule currently exists at the regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

There are many different milestone dates later this year, and over the next few years, for the development and implementation of TMDLs in the region. No, this schedule is not being met in all instances. Why? Mostly, because the process of developing the TMDLs seems to repeatedly lead to a conclusion that additional science needs to be generated so that a decision can be based on sound science, instead of conjecture or inadequate science. Generating science costs money and takes time. The staff of this region has taken a position, supported by the regional board that it is better to incur the displeasure of others caused by delays, rather than to suggest poorly-supported TMDLs based on inadequate or inappropriate science. Why? Implementation of TMDLs is often woefully expensive. It would be poor public policy to require enormous expenditures without adequate scientific basis.

Further, it is clear to the regional board that there is a major staff effort underway to develop and implement TMDLs in the shortest possible time. With the available resources, the importance of doing the job correctly, and the current efforts of staff, the schedule will be what it is.

12. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

The most important steps in implementing TMDLs are to include them in both waste discharge requirements and in the updates of the water quality control plans (basin plans). In this region, TMDL requirements have been included in specific individual waste discharge permits, general waste discharge permits and in basin plan provisions.

Yes, other agencies do have a responsibility to do their share with respect to the implementation of TMDLs. This is why TMDL provisions have been included in the area-wide storm water permits, which are the responsibility of county and municipal entities to implement. We ensure that they meet this responsibility by enforcing the permit conditions.

Perchlorate Groundwater Contamination

13. *Are any other drinking water sources affected by perchlorate contamination? Is replacement drinking water necessary for residents and is it being provided?*

Yes, many water sources are affected by perchlorate. The Inland Empire and Orange County have been major citrus producers since the late 1800's, and the preferred fertilizer until near the end of World War II was natural fertilizer imported from Chile. That fertilizer contained approximately 0.1 to 0.2% percent perchlorate. That is 2 to 4 pounds of perchlorate per ton of fertilizer. Millions of tons of Chilean fertilizer were imported into the region between the 1880's and

1940's. Therefore, much of the perchlorate found in the region is of fertilizer origin. Add to that the industrial sources in the Rialto/Colton groundwater basins, and this is an extensive problem in the region.

Yes, replacement water is necessary in those cases where perchlorate concentrations exceed State Department of Health Services drinking water reporting levels. Fortunately, well-head treatment on the affected wells has addressed this matter, and it is our understanding that no one is receiving drinking water at a concentration above non-detect for perchlorate (at the detection rate of 4 ppb).

14. *What steps is your board taking to address the perchlorate problem? What type of monitoring and groundwater treatment have you ordered?*

The answer to this is well beyond the scope of this paper. The board has required millions of dollars of high-tech, multi-completion and Westbay-equipped wells both on-site where industrial discharges took place and downstream where the perchlorate plume in North Rialto has migrated. Thousands of soil, groundwater and soil vapor tests have been required, and a staggering amount of data have been and continue to be generated. Further, cleanup and abatement orders have been issued to the responsible parties, including San Bernardino County, which has also installed a groundwater extraction and treatment system, augmenting the treatment network on the affected downstream public water supply wells. While well-head treatment continues to protect the quality of public water supplies, all of these data will be utilized in the overall evaluation of the aquifer and the determination of how best to approach and design an ultimate cleanup strategy.

Leaking Septic Tanks

15. *Has it been established that leaking septic systems caused the high bacterial levels in Canyon Lake? What is the current status on the construction of new septic systems for Quail Valley?*

Yes, failing (not "leaking") septic systems in the Quail Valley area are considered to be one of the sources of high bacterial levels in Canyon Lake.

The current status of construction of new septic systems in Quail Valley is that Riverside County staff have increased their level of scrutiny of septic system proposals, so that recurrence of septic system installations in the fractured rock environment, so prevalent in the Quail Valley area, is minimized.

16. *Does your board still believe that septic systems can continue to be built until a sewer system is constructed, or is some type of ban being considered?*

Staff of the regional board and staff of Riverside County Environmental Health are working collaboratively to come up with a recommendation to the regional board to address the septic system failure problem in Quail Valley. It was originally thought that it might be possible to continue to install closely scrutinized systems in Quail Valley while the sewer system is being designed and constructed. However, as more data have been generated, it seems more likely that the staff recommendation will be that which was presented at the May 8, 2006 public workshop to consider a basin plan amendment for a septic system prohibition in Quail Valley. That recommendation is for the complete prohibition of new septic systems in the high-density areas of Quail Valley, but to allow continued septic system installation in areas where lot sizes are adequate and subsurface soil conditions are appropriate. There are significant concerns that it is inappropriate to continue to develop new units on septic systems on the very small Quail Valley lots which also typically have inadequate subsurface soil conditions for the use of subsurface disposal systems (dense, fractured rock with an extremely limited soil profile).

A basin plan amendment hearing to consider the septic system prohibition has been scheduled for the evening of August 14, 2006 in the area of Canyon Lake/Quail Valley. Testimony of all interested parties will be heard, and the regional board will consider the proposed basin plan amendment.

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 23, 2006
3:25 P.M.

548-R

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 23, 2006

3:25 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

MICHAEL C. GENEST, Director
Department of Finance

BENITA D. HALEY, Ed.D., Member
Board of Governors
California Community Colleges

GARY E. REED, Member
Board of Governors
California Community Colleges

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: All right, Mr. Genest, would you please come forward, please. Bring your gin with you.

As Debra Bowen is proceeding to her seat, she's noticed there's a little bouquet there. This may be her last Rules Committee hearing today, and we just wanted to acknowledge that she's been an extraordinary Member for the two years that I've Chaired this and is going to be really missed.

There are very few people who have the diligence and the insightfulness to perform week after week as you have. We will miss you.

SENATOR BOWEN: Thank you.

CHAIRMAN PERATA: This is a very hard committee. Just pretend you're talking to me. This is Michael Genest, who probably needs no introduction, but he's the Director of Finance.

We tried to encourage him not to take the job. He wouldn't listen, so Michael, go ahead.

MR. GENEST: Good afternoon, Mr. Chairman and Members.

I appreciate you having me here today.

Before I begin, I'd like to introduce, if I might, some of my family and friends.

CHAIRMAN PERATA: Please do.

MR. GENEST: My wife, Kalli Genest. My two sons, Lt. Thomas Genest of the United States Navy, and Cadet First Class Dennis Genest, of the United States Military Academy at

West Point.

I also have members of my executive team here today: Vince Brown, the Chief Deputy Director of our Department; Anne Sheehan is the other Chief Deputy for Policy; Molly Arnold, I think, is here, the Chief Counsel; H.D. Palmer, you all know, is our spokesperson; John Lloyd is our Legislative Deputy.

I'd also just like to thank my good friend, Peter Schaafsma, who happens to work in that other house but has taken some time to come over here in support of me. We've been friends for many years. And my great assistant, Maureen Schwind, I thank them for being here.

CHAIRMAN PERATA: One of the rules here is that when Richard Kostigan comes in, that's when he feels like things are getting a little rocky. It's kind of like the canary in the mine.

MR. GENEST: Did he come in?

CHAIRMAN PERATA: It's like a tuning fork.

[Laughter.]

MR. GENEST: I'll go as fast as I can to avoid that Richard thing.

The Department of Finance was created in 1921. I just realized this. I thought it was 1927. We used to be a part of the State Board of Control. In 1927 we became a separate department. And in all that time, we've served 14 governors, and we've been held accountable by 42 sessions of this Legislature.

I was honored when Governor Schwarzenegger asked

me to take over the responsibility of continuing the fine tradition that the Department of Finance has set of service, professionalism, and integrity.

When Governor Schwarzenegger took office, the state faced an operating deficit of $14 billion, which was projected to grow to 16-and-a-half billion by this year. We also had $14 billion in short-term notes coming due and no immediate plan for how to repay them. Thanks to working with the Legislature, we were able to refinance our debt, and we've reduced this year's operating deficit to $3.3 billion, while fully funding education.

Now, that's great progress, but I think we all know we have a lot of work to do. And I'd like to commend the Legislature this year for being aware of that and acknowledging that from day one, that we do have more work to do. And you have helped us set aside almost $5 billion dollars, a record amount, from the revenues that we could have spent, but we're using them to build the reserve, and to prepay debt. And I think that shows great work by both the Governor and the Legislature.

The responsibility that the Governor has asked me to assume may seem daunting. We, as I said, have a lot of work still to do, but I know that with your help we can finish the job of getting our budget back in order.

I very much appreciate the opportunity to appear before you today, and seek your favorable recommendation to the full Senate.

I'll be happy to take any questions you may have.

CHAIRMAN PERATA: Thank you.

Members? Senator Bowen.

SENATOR BOWEN: Actually, we had a very good discussion earlier in the week, and couple issues got ironed out there.

I think one of them has to do with a letter, a request I had made to the previous, or a couple previous directors of Finance, with regard to information on the impact of defined contribution pension plans.

I understand that an answer to that letter, which is now about a-year-and-a-half old, will be forthcoming at some point.

CHAIRMAN PERATA: Confirmations are wonderful things.

SENATOR BOWEN: Actually, you and I spoke, I think, in fairest length about some of the issues that my colleagues have had in attempting to get accurate information from the Department of Finance with regard to the fiscal impacts of legislation that they're carrying.

And as I was getting ready to come in today, I had a couple of different Members pull me aside and ask me if I would follow-up on that thread. Apparently, it's not just me.

There are a number of complaints from Senators who are concerned that Finance often waits until the last minute to raise concerns, and that attempts to be proactive in consulting with Finance sometimes go unmet.

Then, even after a request in advance, you get Finance coming in with concerns, sometimes policy concerns not

fiscal concerns, that the author was never made aware of, and that when authors address the written concerns that were raised, that opposition from Finance is not removed.

Couple of questions. One, do you need more staff?

MR. GENEST: Well, we've certainly -- Finance has not grown as fast as the rest of the state budget, and we have cut back relative to our workload. And I think we have made some priority decisions relative to the way we've done bills in the last -- not even in this administration, but going back for several years, under the pressure of various budgets -- budget problems that the state has faced.

I don't know that I can say we need more staff. I think that's something I will have to look at.

I think that the problem that you've identified is a true problem, and it's not the first time that I've heard of it.

Confirmation hearings are wonderful things, because I have heard from several folks the same problem today and in recent days.

And as I committed to you, Senator Bowen, I think that -- I don't intend to micromanage the department. I am not that kind of a manager. But I think this is an instance where the Director can get personally involved more often.

I would extend the invitation to all Members, if you think your bills, not just of this house but both, that if you think your bills are getting bad treatment, or that we are late with our concerns, and what-have you, I'd like to

personally get involved in that, not so much because I'm personally going to solve every problem, but I'd like to start to get a better sense of exactly what the nature of these problems are, and to try to diagnose what we need to do to fix it.

There are some things we've done recently, thanks to the staff of both Appropriations Committees. We've started to get a little better notice in advance on which bills will be up. So, that's helped us a little.

We have -- we're trying to work with the Governor's Office to get a little bit more flexibility to share fiscal information with you, even when there may not be an approved position. I think we can work on that.

And your question about staff, conceivably. I'd like to defer judgment on that until I have had some time to actually personally be involved in this. But I will take a personal interest in figuring out what we need to do here.

SENATOR BOWEN: What can we do to get earlier feedback for Senate Members?

You made a reference to having to wait for an approved position.

I think you're probably getting a lot of questions about this because all of us know that you've been on the other side of that equation, and that you're well aware of how frustrating it is, in the sausage-making process, not to have a particular ingredient be known until fairly late.

The casing, yes. The casing comes along later.

MR. GENEST: One thing that we can do, I think,

is prioritize the bills on two bases. One, those that are most likely to keep moving. And two, of course that's always a judgment call, and we're not always well informed about that.

But two, the ones that have the most significant fiscal issues.

So, I think prioritizing will help. Earlier notice from the committees on which bills will be heard can help.

And we do have some work to do with the Governor's Office to sort of distinguish between giving you information about the fiscal, and then dealing with what the position of the administration may be. I think getting the information on the fiscal can help, independent of whether or not the administration has taken a position on the bill.

So, we're going to talk with the Governor's Office about what flexibility we can have in that regard.

SENATOR BOWEN: Let's just talk for a little bit about the cost versus savings. And again, this is an issue that we discussed briefly.

I think many Members have expressed concerns about instances in which costs are calculated, but not savings. There's certainly a difference between speculative savings that may come about from reduced crime rate, or from increased tax revenue, but the example that I gave just happens to be one of my bills. It's one that requires Medi-Cal coverage for high-risk pregnant women to stay at home, rather than be hospitalized. The cost of the treatments, $220 a day; the cost of a hospital day is $1200. And yet, that bill has a price tag

1 attached to it of in excess of a million dollars.
2 And it's a treatment that's actually already used
3 in those counties that are Medi-Cal managed care, but not in
4 Medi-Cal HMO counties.
5 That seems like it's going to really skew. The
6 net result to taxpayers should be, they're better off without
7 the $1200 a day, but that's not reflected in the analysis.
8 How does Finance make a determination of when to
9 look at cost savings as well as direct cost?
10 MR. GENEST: Well, you're quite right that our
11 first instinct is to look at the first order effects of a bill
12 and give them priority in our analysis because they're easier to
13 quantify and a little more certain.
14 Many bills, such as yours, do have a pretty easy
15 to quantify second order effect, which might go in the other
16 direction.
17 In your case, I have looked at that bill again,
18 and I think we overlooked savings there, and we need to rethink
19 our analysis. And we'll be doing that.
20 It is hard for us to see savings sometimes.
21 Often the information that points at the saving is not as clear
22 cut as the information that points at the cost, but that's
23 something that we need to work on in Finance.
24 We -- I think one way to do it is a bill at a
25 time. When -- when you don't think, or when a Member does not
26 think that we've adequately accounted for those other effects,
27 I'd like to know about it, and we'll see what we can do about
28 it.

We can work on our training program inside Finance. As you may know, we also have pretty extensive staff training programs, and I'll be taking a look at that and see if we can build something in there.

But I think as we go forward, the best fix to some of these problems is to keep in contact with me. And I'm planning, as I said earlier, to get much more directly involved in the bill analysis process, at least until we figure out what we need to do to make it more useful for you.

SENATOR BOWEN: All right.

One other question with regard to this particular issue. Again, this is not something I've experienced. With this one, this is not something I've experience, but was raised by a couple of other Members who've had concerns that there are some staff at Finance who have personal grudges with particular Members or on particular issues.

I don't know anything about the specifics, but concerns have been raised to me that in some particular issues, or with some particular people, it's very difficult for certain Senators to get a decision that's made on fiscal issues.

How should Finance and the Senate handle this kind of concern?

MR. GENEST: Well, in general, it is our responsibility to manage our workforce. And there is no place in our workforce for personal grudges. There is only place for good, solid, professional, analytical work.

That doesn't mean that we don't have people, and that we don't sometimes make mistakes. We do have pretty firm

programs of intervening in cases where we see problems.

Again, the best way to address those problems is to raise them to Finance. Myself or Mr. Lloyd, who is our Deputy for legislation, or someone else in our executive office, and we will certainly look into that.

If any Senator feels that there has been any sort of personal grudge that has entered into our analysis, I want to know about it because that's totally inappropriate.

SENATOR BOWEN: Thank you for that commitment.

One of the things that I've worked on over the years has been information technology projects. I have no idea who's going to take on that task, for which the public has always been very grateful, when I'm gone.

But historically, I heard a lot from departments that DOF was a roadblock, that it was another place where you had to get permission, and that it slowed down procurement process which just made it more difficult than it already is for a state of California's size to get its procurements done rapidly enough so that the technology hasn't become obsolete by the time we install it.

MR. GENEST: We, I think, have made some substantial improvements in the way we deal with computer projects, in large part thanks to being told to do so by the Legislature.

I think we're about to have a great success in the State of California. I'm keeping my fingers crossed that the Child Support Automation System, CSAS, will come up on time this October and help us to avoid $220 million of payments that

we've been making to the federal government.

As you know, Senator, you were here at the inception of the last one, which came crashing down. We had a lawsuit, and a lot of trouble. We had to restart that project, and when we restarted it, the Legislature exempted that project from some of the normal kinds of processes. And I think that's been beneficial.

Now, I don't want to advocate entirely for taking review out of the process. I was -- I've been on both sides. I've seen projects where my perception, as somebody out in the bureaucracy, was, "Doggone, Finance is just causing trouble, getting in the way, slowing us down."

And I've also seen it now from the Finance side, and I've seen where often the departments don't give us enough information, that sometimes we have scanty information that comes up in committee, where your committee staff or Members realize that, wait a minute, you haven't got all of these questions answered. We're afraid to go forward with this thing.

There are two sides to the argument.

But I think an ethic, or an ethos of being more helpful to departments is something that we have now ingrained in the Department of Finance.

With respect to CSAS, our marching orders to our folks are: Time is the money there; success is everything.

We don't want to simply make sure that if there's a failure, it's not our fault. We want to be part of a successful effort, and we'll do what it takes to make the project successful.

I think we have a lot of work to do in that regard. We need to figure out exactly how we're going to handle the CIO of the state. That's been a little bit up in the air. We're working on that. We hope to have some resolution to that for the next session. That should help some.

Whether that leaves the review process inside Finance or takes it outside, as was recommended by some people, we'll have to see. But I think we do need to work on our -- on our whole process of dealing with computer systems.

SENATOR BOWEN: You know that there's been a history of projects that have been difficult, if not downright failed in California. And that there have been many hearings over the last decade trying to look at where the responsibility lies. Early failures with our contracting, which I think we've improved on.

And I was told actually just this morning that the administration is proposing a measure that would delete the requirement to provide the performance bond that's currently required that's at 50 percent of the value of the IT contract, and instead, allow DGS to set the value of -- to set the requirement for a performance bond on a project-by-project basis.

This is a concern, of course, because that performance bond is there not for us, but to protect taxpayers.

What can you tell me about this proposal, which I'm told is going to be done as a gut-and-amend, if it hasn't already been done, in the Assembly?

MR. GENEST: I haven't heard of this particular

bill. I'll look into it when I leave here.

I do know the issue. And again, there are two sides to that. I'm a big advocate of those performance bonds because they do protect the state from failures by our vendors.

On the other hand, I have seen contracts in which the performance bond itself made it impossible for a lot of vendors to bid. Maybe there are ways that we can fine-tune that.

I don't know on the particular bill whether that's the way or not. I'm not familiar with it. I'll have to look into it.

But again, I do see two sides to that issue.

SENATOR BOWEN: There is language out. I don't know that it's in a particular vehicle yet, but there is language that's out.

And I'm told that there's also a provision that would allow the Department of General Services to establish more than one set of terms and conditions for IT projects, and then change the way the IT commissions work, conditions work.

And I'm also interested in, again, how that would square with the protection of taxpayers, because those conditions and the failure of our legal department early on in our history with IT projects was that we didn't contract very well, and taxpayers were left holding the bag in a number of instances.

MR. GENEST: Right.

SENATOR BOWEN: I know we don't want to go without vendors, or without bids. That's not good either.

1 MR. GENEST: No, we need competition to keep the
2 prices down, and excessive requirements in the RFP can reduce
3 amount of the competition.
4 But on the other hand, they can protect the
5 state.
6 Again, I don't know the specifics of this
7 particular proposal. We -- I can use CSAS, however, as an
8 example. They were exempted from using the standard terms and
9 conditions, and I think it was beneficial for them, even though
10 it has put us in the position of not having the most ideal
11 provisions in that contract for how to do augmentations to the
12 performance of the program.
13 There was a program where everybody knew going in
14 that we didn't have -- we could not possibly get a good idea of
15 everything that was needed, so we had to do it as we went.
16 And I think the Legislature was wise in exempting
17 us from the terms and conditions for that project. And I think
18 the terms and conditions that we got, while we have to negotiate
19 hard on everything single add-on, I think we've done a good job
20 of that. I don't think they've been excessively expensive.
21 In general, I'd like to have something nailed
22 down a little better than that, and standard terms and
23 conditions would, of course, make provisions for what happens
24 when we ask for some additional functionality.
25 So again, I don't have the specifics, and I do
26 see that there is room for improvement in there, but I think we
27 need to be careful which direction we go.
28 SENATOR BOWEN: Does it concern you that there's

a major procurement overhaul being proposed one week before the end of the session, and you don't know any of the specifics of it?

MR. GENEST: I'm surprised to hear it, and I am concerned about it. I'll have to go find out what's going on with that.

SENATOR BOWEN: It certainly concerns me. It's a time when we've got a number of issues that we know we've had to work on, and to try to do procurement reforms in the very last week of the session, I think, regardless of their merits, doesn't strike me as being a really great time to begin working on that issue.

So, I look forward to continuing our discussion about that.

Couple of other issues on automation. It's been, I think, nine years, ten years, maybe eleven years since the Corrections Management System Project died.

Can you give us a thumb-nail on where you are on moving the Department of Corrections and Rehabilitation to an IT system that's, at the very least, in the 21st or maybe the 1950s.

I'm told, and I think you agree, that we've got a major problem with people even knowing where people are in the Corrections system: who's there; what system they're in; who's on a bus for medical care; who's on a bus to court.

A little thumb-nail on what's happening with that? I know it's something you have been concerned about and have been working on.

1 MR. GENEST: Right. As we discussed in your
2 office, one of the problems there has been the lack of
3 infrastructure, just wires running into the prison, wires and
4 other types of infrastructure. It's a little harder to put a
5 wire through a prison wall than it is to put it through the wall
6 of a normal building. And it raises all sorts of security
7 issues.
8 It's not the kind of place where wireless would
9 be the ideal solution, unless we can guarantee that those
10 prisoners don't know how to figure out how to get onto that
11 system.
12 SENATOR BOWEN: And I'd be with you in not
13 betting on that.
14 MR. GENEST: But we have in this administration,
15 we've invested more money up-front in getting the infrastructure
16 in there so that as the projects are ready, they don't have to
17 pay -- each project doesn't have to pay for the backbone of
18 wiring, and PCs, et cetera. It will already be there.
19 I think that's been a step in the right
20 direction. The Department of Finance has been very supportive,
21 and very aggressively supportive, of the Department of
22 Corrections and Rehabilitation's BIS system, which is one that
23 is -- I think it's out for an RFP shortly. It's an important
24 system. It will help them keep track of their spending, their
25 staffing, their other personnel issues, lots of things, but it
26 won't really help them keep track -- that system does not deal
27 with the offenders. The statewide --
28 SENATOR BOWEN: That's the cost of peanut butter

contracts.

MR. GENEST: Right. And there's a lot of money that we can save, and a lot of efficiencies we can achieve there.

But we do need a system that better tracks the inmates, and the Statewide Offender Management System, I'm not sure exactly where it stands. It's had problems. It has been a long time coming. It's a critical system. We do have to commit to get it up.

We obviously have a lot of business in the Department of Corrections and Rehabilitation that's going to interface with that. It would be better if we had that system today. We would know better how to plan for our growth in the future.

But we are committed to bringing that up, along with a lot of other things that are going on in that department.

SENATOR BOWEN: One of the concerns that I've heard has to do with the receiver, and the fact that the receiver's basically in the process of drafting requirements for us to create a system for health care for inmates. And, of course, we need that system to be a part of a larger system. We will not serve our taxpayers well, let alone enhance public safety, if we have a system that only deals with health care, and then a stand-alone system with an entirely different set of identifiers and so forth that deals with Corrections' other needs.

What do the Legislature and the administration need to do, and I think this is work that we need to do

1 together, to work with the receiver so that whatever happens
2 there can be a part of a larger system?
3 And I'm particularly interested in your view of
4 the timeframes that have at least been suggested by the
5 receiver. I'm very concerned that trying to speed up this
6 project and the health care project, and get it done in short
7 order will lead to a disaster.
8 One of the early principles that I learned with
9 IT is that you can't get nine women pregnant and make a baby in
10 one month.
11 You'll all think about that for a minute, and
12 then you'll get it.
13 It takes however long it takes to go through the
14 process, and you can't simply add more people coding without
15 having some bigger idea of what it is and where it fits in, and
16 do the testing. And that's another place where we've seen major
17 issues with IT projects, where there's not enough time to do the
18 quality assurance, and the testing that should be done before
19 roll-out.
20 MR. GENEST: I think the first thing we have to
21 do is more along the lines of just diplomacy, because the
22 receiver has taken control of the health care. We all support
23 what he is trying to achieve. We think the judge is on the
24 right track, that our health care system there is a mess and
25 needs to be fixed post haste.
26 When the receiver first came in, he talked to us
27 about adopting the system for health care records that the
28 Department of Veterans Affairs, the Federal Department of

1 Veterans Affairs has. We were already working in Corrections on
2 using a piece of that system as a pilot for the rest of -- to
3 bring the rest of it in over time. He talked about just doing
4 it all essentially overnight.
5 I think he's backed away from that, and I think
6 he's starting to realize as he's become engaged with the
7 department that it's a little more complicated than that. And
8 you do have to interface with other things. And some of those
9 other things do not yet exist.
10 So, what we'll have to do is work with him. I
11 think the receiver is increasingly comfortable that we're on the
12 same team. He's very protective of his particular area of
13 responsibility and is not interested in us dictating to him how
14 he will work in that area. But there is an interface, and I
15 think he's getting an understanding of the importance of dealing
16 with that interface.
17 There is no question that the receiver, and all
18 the attendant problems and issues that arise from that,
19 including the interface with computer systems and other things,
20 is an incredibly high priority for this administration. And we
21 are very focused on it. We have meetings every week in the
22 Governor's Office with the highest level of the department, the
23 Governor's Office, Finance, other state departments like DGS.
24 And the receiver has been to those meetings and sent people to
25 those meetings. And we will continue to be engaged with him.
26 I think engagement is the key. And I think he's
27 beginning to learn that he's going to have to make sure that --
28 he may be able to move fast to get a health records system in

1 place, and a pharmacy management system in place, but he's going
2 to have to look forward a little bit to what we can do, so that
3 he's going to want the data that he can't now get, that we don't
4 have, that we should have, in system, the SOAM System, that
5 hopefully will be planned and ready to roll out rather soon.
6 SENATOR BOWEN: What's the staffing situation on
7 that IT project and more generally on IT projects?
8 I know one of the barriers the state's had over
9 the years has been that, particularly during the dot-com boom,
10 it was extremely difficult to hire people to work in civil
11 service positions at civil service wages, with no stock options,
12 writing computer code, when they could go to Sand Hill Road and
13 have a much different compensation package.
14 MR. GENEST: We have, as you probably know,
15 increased the computer staff at Corrections. We're continuing
16 to look at whether that's adequate.
17 We've also, in the latest MOU with the unions --
18 with the union, given a bump to IT personnel on the basis that
19 we know that we're out of cinq with the general market, and we
20 do have vacancy problems where we can't recruit. We hope that
21 helps to address the problems, bring the vacancies down.
22 We will always continue to evaluate whether that
23 department has adequate resources to roll out these various
24 systems.
25 SENATOR BOWEN: With regard to vacancy rates,
26 there's been an ongoing concern that Finance leaves a certain
27 number of positions, I think it's in excess of five percent now,
28 vacant in Corrections in order to score savings. That's been an

ongoing phantom position issue. It's something Senator Brulte worked on.

MR. GENEST: Right.

There is a fairly small budgeted salary savings in Corrections, but they do have a very high vacancy rate.

We had the Academy closed for awhile. Of course, we've remedied that, and we're -- in our latest proposal before you, we're proposing to set up a second academy and expand that.

We've also made the commitment to work on the pipeline in getting people into the academies. That's been a backlog.

So, with Corrections in general, we do have a vacancy problem. It's not budget-forced. We're not forcing that vacancy rate on them. It's that it's been hard to keep the guards coming in.

And we are now facing a lot of retirements. People have hit the age at which retirement makes sense for them. And we've forecast that out, and we know we have a problem. We've begun to -- we have actually started accelerated academies. So, we should be able to get that vacancy rate down over a period of time, but I think for awhile now, we're just going to be keeping pace with the retirements. So, it's going to be a challenge.

SENATOR BOWEN: This has been an issue that's come up in the Rules Committee with regard to just about every appointee that we've heard over the course of the couple of years.

There's a huge problem with particularly middle

1 management folks reaching retirement age, and a concern about
2 how department heads who've been here for confirmation are going
3 to be able to function with so many potential retirees. So, I
4 think the problem is particularly acute in Corrections, but it's
5 going to take some guidance and steering from the Governor's
6 Office and from Finance to help solve this problem, because it
7 is a statewide and enterprise-wide issue.
8 What are your thoughts on how to get at the
9 problem of the retirements?
10 I call it a retirement bulge, not meaning to
11 comment on anybody's belt line as they approach retirement.
12 MR. GENEST: Well, I think the primary
13 responsibility for dealing with that issue is with the State
14 Personnel Board and with the Department of Personnel
15 Administration.
16 They have taken some actions, as you know, as I
17 said in my response to the Committee, to begin to address that
18 in a variety of ways. We, as I mentioned also earlier, with the
19 MOUs that we've just negotiated, tried to recognize where there
20 are market disparities, so we can at least keep the vacancy
21 rates -- get the vacancy rates under control where we have those
22 problems.
23 The Department of Finance does play a role. We
24 certainly recognize the problem. We have the problem in our
25 own staff. We do a lot of recruiting and training, and we've
26 got some internal strategies designed to help us better
27 accommodate when retirements happen.
28 But it's going to be a challenge for all of state

1 government for several years to come. I think the key is to
2 make sure we're in cinq with the market so that we pay enough to
3 attract people. I know that sounds funny coming from the
4 Director of Finance, but we have to have the staff. We just
5 have to have them. And we've recognized that in this latest
6 round. And we, when we thought it was necessary, made some
7 adjustments.
8 Even though it does cost a little money in the
9 short run, I think it saves money in the long run to have
10 competent staff to get the work done.
11 SENATOR BOWEN: Despite the fact that we're
12 really having a shortage in the ranks of our public employees,
13 there was no full salary survey until Senator Perata insisted
14 that it go into the budget last year.
15 How are you using that salary survey now? What
16 are the results of having more accurate information?
17 MR. GENEST: It was very helpful to us in this
18 latest round of negotiations. Of course, that's primarily a DPA
19 responsibility, but I talked with Mr. Gilb all the time about
20 these issues, and with the Governor's Office. And we were all
21 quite cognizant of what was shown in that survey.
22 I was, by the way, a big supporter of doing that.
23 I always thought that was a good idea because in general, I
24 think we do -- we serve the people better if we have better
25 information. I don't think we can afford to be afraid of
26 information just because it may point in a direction that may be
27 uncomfortable, like spending more money. We have to look at
28 reality.

The survey has done a good job of that. The way we used it is, it did highlight some areas -- IT, accounting, auditors, a few others, lawyers -- where we clearly have a problem with the market when you look at the local government, and state and federal government market.

It was less useful in comparing to the private sector. We need to work on that. We've got some improvements in the next surveys to get a better feel for how to really make those comparisons with the private sector.

But we never looked at the survey as the only information that we should take into account. We also look at vacancy rates. The fact that we may be under paying counties, for example, in a certain category, if we don't have any problem filling positions in that category, let's use our money somewhere else where we do have immediate vacancy problems, and think it's because we're below market.

So, we tried do take that into account. There's always a budget constraint in these things as well. We tried, in this latest round, to live within a budget that we think was reasonable and adequate, but we couldn't put -- we couldn't put raises everywhere that the survey suggested we might need raises. So, we had to make some judgment calls.

So it's not -- it's not a straight-forward thing. It's something that we need to keep working on.

We will continue doing those surveys, I hope, for years to come, because we'll get better and better at understanding where we stand relative to not just the public market, but also the private sector.

1 SENATOR BOWEN: A final question with regard to
2 staffing and budget. We spent a lot of time in this Committee
3 hearing from the 81 different appointments to Regional Water
4 Quality Boards. And on Monday, we again had board members here,
5 appointees, who testified that they simply don't have the staff
6 to carry out their statutory charge.
7 I am told that the budget of the nine Regional
8 Water Boards are lumped together and submitted as a single line
9 item under the State's Water Board budget item, which means that
10 it is impossible for anyone, other than Finance, to see where
11 positions are allocated, what boards have staff they need, and
12 which ones don't.
13 Do you support revising the budget to ensure that
14 water quality programs are appropriately funded?
15 MR. GENEST: Well, I think it's our job in every
16 budget to look at every department to see whether they are
17 adequately funded, or whether there are ways to save money that
18 make sense, and we certainly do that.
19 I don't think there's any information that the
20 Department of Finance has about the allocation of resources in
21 that area, or others, that we don't share with the
22 administration in terms of where people are assigned.
23 We may not, in Finance, always know. We have
24 poor tracking systems throughout state government for knowing
25 exactly where personnel is assigned. Sometimes it's only the
26 department who knows that, and many of the departments sometimes
27 have trouble figuring out exactly how their workload and their
28 personnel are allocated, Corrections being a really good

example.

So, I think we're more than willing to share the information we have, and we'll certainly look at those budgets as we look all the budgets, to see if they're adequate.

SENATOR BOWEN: I think the concern in particular with the boards is that you have nine regional water boards, and they're each separately constituted, they're looking at different permits, different standards.

And we have no way of knowing, except for when we get board members here for confirmation, and they tell us that they are not adequately staffed to carry out their work, what staff positions there are.

You're telling me that you don't know which of the nine water boards have how many personnel?

MR. GENEST: I'm not familiar with that area in that level of detail. But if we know, we share that information with the Legislature. It's frequently the case we don't know.

SENATOR BOWEN: It seems to me that it's something that, if you don't know, you ought to know, because it isn't just a matter of the environmental enforcement. We've got permits that just aren't being processed on a timely basis because there is simply not enough people to do the work.

MR. GENEST: One of the things I talked about in my letter to the Committee was the new BIS program, the Business Information System program, which is going to be modeled after what the private sector is doing in enterprise resource planning. It's an acronym that you're probably more familiar with even than I am.

But one of the things it will enable us to do is exactly that sort of analysis. And there is no question, in looking at that system, when we bring forward our proposals on that in the years to come, we can document many cases where we simply don't have that information. Even the department directors don't have it at their disposal. It can be very hard to get that kind of information, especially in larger departments.

On the water, let me look at that separately and see what I can figure out.

SENATOR BOWEN: We're actually spending money on replacement water because we can't get some of these things done. So, there's a fiscal cost to not having staffing done, as there is in many instances.

I have nothing further, Mr. Pro Tem. Thank you.

SENATOR BATTIN: I don't have any questions for Mr. Genest.

I just want to say that I've known the Director of Finance before he became the Director of Finance, when he worked for the Senate Republican Caucus as our lead, then also when I was Vice Chair of the Appropriate Committee, he was the head of our team on Budget and Appropriations.

He's done always a great job. And I think that you answered the questions very well, today and I am happy to move the nomination.

CHAIRMAN PERATA: I have just a few. They're really just follow-ons to what Debra said.

A law was passed in '99 or 2000, requiring the

1 Governor to submit a five-year infrastructure concurrent with
2 the budget.
3 We got one this year in March, but we didn't get
4 one the two previous years.
5 I think, with regard to the infrastructure, I'm
6 not familiar with the five-year plan, having probably received
7 and not read it. But it gets to the point of, if you're going
8 to do surveying of all the IT requirements, you know, places
9 where we could be doing a lot better if we had an investment, if
10 that's not there this year, and it would be nice if we got it on
11 January 10th, I'd like to have that kind of an assessment.
12 Because one of the big criticisms that the
13 receiver had when coming here is that our system is so
14 antiquated that you can't track anything. And he thought, and I
15 believe correctly, that if you had an IT system up, not
16 withstanding boring holes in prisons, but there just is no way
17 of identifying who they are, in the area of the medicine what
18 their medical files would look like. And since there's a lot of
19 movement back and forth, then the obvious, you know, you can
20 finish the sentence.
21 So, I would like to see sort of a
22 comprehensive -- it may be there, it may not be there. But
23 when you look at it, I'd like to see it more comprehensive than
24 not.
25 MR. GENEST: I think that's a fascinating idea.
26 I hadn't thought of it, but it makes sense. And analyzing it to
27 the five-year infrastructure plan is just right, I think.
28 Whether it would be a five-year plan or what-have you, let me

1 talk with the State's Information Officer about that.
2 I think it's something that we probably should be
3 doing. In one sense, we will be doing it, because as some of
4 you know, we are proceeding with the development, and we're in
5 the early stages of this BIS system for the whole state.
6 There's no way to justify that system without explaining where
7 the holes are in the current structure. And we are working on
8 doing that sort of a survey.
9 Now, that's not an entire survey because it
10 doesn't address things like offender management tracking. It's
11 really more of a financial, and accounting, personnel, kind of
12 system.
13 But I think it's a great idea. I don't know if
14 we can get it done by January 10, maybe we can. Let me look
15 into it.
16 CHAIRMAN PERATA: Give me a report of where we
17 are.
18 One of the things, and you've worked here a long
19 time, about the Department of Finance is that, of all the areas
20 of continuity, there is in DOF that continuity because it
21 involves money. And I think a lot of it is who you work for,
22 who the Governor is, and then your own personal proclivities as
23 you view the job.
24 But as this Legislature, and term limits is now
25 on everybody's mind because we're punching people out everyday
26 now who are leaving, and it's like, you know, you're having two
27 funerals a day, but as these people go out, you recognize
28 that --

SENATOR BOWEN: We're not dead yet.

CHAIRMAN PERATA: Yes, Debra's still doing pretty well.

But, you know, we've had an equal number of retirees from staff that are your time in grade and others.

So, where do you find the best vision of the State of California? It's probably going to be in the Department of Finance, because you see the programmatic stuff, but you also see the financial stuff. You know, or could know, what we need and what we don't have.

That's just something, Mike, to think about in your spare time, I'm sure. And that's why I liked to see that you answered that in a very diplomatic way, but you're not being confirmed as an ambassador.

You need more staff. We just waste money, and we waste taxpayers' money, and we waste other people's money, if in fact we don't have enough staff to do the fundamental things. And I think that's what gives government a bad name more than anything, is when you can't get something done because things are backlogged. Then, of course, they kick us around because we're easier to do.

So, that's another homework assignment for you.

I have another question about the budget just generally. It would be wonderful if we could ever make that thing more user-friendly or understandable.

I've been at this thing for ten years, or eight years, some weird amount of the time. I mean, it's hard.

Now, we can put it up on the web, which I think

1 we're now doing, and that creates a certain transparency, but it
2 doesn't do a thing to make it more intelligible.
3 I don't know if we need to get somebody from the
4 advertising world who's used to dealing with idiots and small
5 phrases, but it is just really hard.
6 And the natural assumption is, we're obfuscating.
7 You know, there's something that we don't want to tell people.
8 Even when I was in county government, where you'd
9 have unfilled positions. You'd end up having a certain language
10 of your own. What is that word, where you have so many man
11 hours, P years.
12 So, I know there's something that we could do
13 together, and we ought to do together, because the obligation
14 should not fall just to the administration. It's also a
15 legislative function.
16 But you've now seen both sides. And as much as
17 you might like being able to keep all the chuckles to yourself,
18 I'd like to see that. I'm going to come back at you at some
19 point and talk further about that.
20 MR. GENEST: I almost feel like I asked you to
21 ask me that question. But just for the record, I didn't.
22 It's nice that you did ask me that, because we
23 are -- we are actually engaged now in Finance in a couple of
24 efforts. I don't think they'll get us all the way to where we
25 want to be. I think we need to improve every year.
26 We're bringing in an editor from the outside
27 world. And my instructions to that person are: Make this so
28 that we can understand it.

I sometimes, my eyes glaze over with some of the prose that we have in there. I think we can have shorter sentences. I think we can be a little more pithy and to the point. We're going to work on that.

We have to retrain our whole department. We write as we write. I think we need to improve that writing. That's one thing.

The other thing is, a year ago or two years ago, I think, we did a survey of all the people who read the budget. I mean, everybody in this building, and the librarians, lots of folks, LAO and whatnot.

But we got a lot of feedback, and we've used that feedback in designing the web base. The most common thing people wanted was the ability to click on something and go to the detail. We've got some of that. We need to build more of that in.

Finally this year, we're taking a page out of the Legislative Analyst's book, because they've always -- they've always said, "What changed? Last time the Legislature enacted the budget, here it was for this department, or this, what-have you. Now, it's this much. What are the changes in here?"

We're going to do what at the LAO they used to call Table Two, which goes point-by-point over the changes. And we're going to try to have standard definitions, so that when we say this, "It's a million dollars for workload," everybody knows what workload means. If you don't know, you can click and go to a definition.

Now, some of that's not going to get implemented

immediately, but I think we're going to make big improvements this year.

CHAIRMAN PERATA: You know one of the most common things that people complain about? When you have the parens in thousands.

MR. GENEST: You don't know whether it's a negative or a nonadd?

CHAIRMAN PERATA: Yes. Then you have the negative number in parens.

But when you have it in thousands or in millions, it's hard for people. It's like they have to stop and calculate.

I don't think it would take up too much space if you have to even go down and just put 12 million with some zeros on it.

But I've heard that ever since I've been in government. It's kind of like an accountant deal, you know. The accountants use that, but real people don't.

MR. GENEST: Oddly enough, I think that's a pretty tough one to change. That's embedded deep. I'll look at it, but I think that's going to be hard to deal with.

CHAIRMAN PERATA: Probably the same people who can't write sentences. It's accountants, I know.

One final question is, we reestablished something that was called the Specialized Mandate Unit. What the Legislature needs, I believe, is that the cost estimates of the local mandates. Even if you can't quite define what the program areas are, but just what the costs are, because if I had my way,

every bill would have a cost on it. If you're enhancing a sentence, what's it going to cost us? We get by pretty cheaply, and now, with the short terms, I can do stuff today, but it's like a time bomb that's going to go off long after I leave.

So, that whole area of mandates, more specificity because otherwise, it becomes sort of an open debate. We can disagree once we have a starting point.

So, I would encourage you to work on that. That gives us, I think, in the Legislature, more of a running shot at doing more responsible things.

MR. GENEST: As you know, that's an area where we have asked for more staff this year, and we thank the Legislature for giving us that.

It may or may not be enough. I think that what we first have to do is reestablish that unit. We're going to do that, because some years ago, they thought it was a good idea to get rid of the centralized unit, and we lost a lot of expertise, and background, and information. We're going to rebuild that. It may take us awhile.

We're going to focus first on the most expensive, already existing mandates to see if we can figure out ways to save money. And that'll help us learn better how to work on the bill analysis as it comes through.

CHAIRMAN PERATA: Great.

We're finished with the questions. I just want to let you know that he's really in his mother's arms here. So, if you'd like to come up and just say who you are, and you really think he's wonderful, that'd be good. I have to cut some

of these people loose to go back and vote, and then come back quickly so we can take up our last two guests.

So, having discouraged anybody, anybody hear want to come up and say anything nice?

[Laughter.]

CHAIRMAN PERATA: Seeing none, anybody want to come up after all this? And if you got here late, the two guys in the white uniforms are both military policemen.

[Laughter.]

CHAIRMAN PERATA: Okay, so we have a motion to approve.

Mike, I think this year was perhaps a false spring. Next year might be a lot harder, but we appreciate your hard work. We look forward to working closely with you to wend our way through the future.

MR. GENEST: Thank you.

SENATOR BOWEN: Did you ask for opposition?

CHAIRMAN PERATA: I did. I sort of couched it so there wouldn't be any.

Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: Congratulations. You'll be up tomorrow.

[Thereafter, SENATOR CEDILLO voted Aye, making the final vote 5-0 for confirmation.]

CHAIRMAN PERATA: We are going to take a brief recess so Members can go back and answer the calls.

[Thereupon a brief recess was taken.]

CHAIRMAN PERATA: We're going to reconvene the Senate Rules Committee.

We have two members of the California Community Colleges Board of Governors. Will you both come forward.

If you'd like to introduce one, Senator, proceed.

The other one should not feel like they're being neglected.

SENATOR ASHBURN: Thank you, Mr. President.

It's my great pleasure to introduce an extraordinary person, Gary Reed, who is being nominated for the Community Colleges Board of Governors. Gary runs an investment management firm in Porterville, California, Tulare County. Former Chief of Staff to then Assemblyman Bill Jones. A former member of the Tulare County Board of Supervisors. A teacher in his background. A former member of the California Commission on Teacher Credentialing, and numerous other positions of community service.

1 Great interest in education. Your wife, Chris,
2 still on the County Board of Education.
3 Gary has a great interest in education and in
4 support of our community colleges. I think he'll be a great
5 private sector voice there.
6 One of my best friends. That probably hurts him
7 in our process today.
8 CHAIRMAN PERATA: I would have probably left that
9 out.
10 [Laughter.]
11 CHAIRMAN PERATA: Welcome, both.
12 Ms. Haley, would you like to start?
13 MS. HALEY: Well, thank you very much. I want to
14 first say that I'm sorry that my Senator from my area is going
15 to be leaving the Senate, Debra Bowen. I've been acquainted
16 with her ever since she began as an Assembly person.
17 SENATOR BOWEN: Neither of us had any wrinkles.
18 [Laughter.]
19 MS. HALEY: Not then.
20 And so, you'll be missed, Senator Bowen, very
21 much.
22 And for myself, I appreciate being here and being
23 here for reappointment. I've enjoyed working on the Board of
24 Governors or these two years, and I am ready for questions from
25 you all.
26 I've really had a very interesting two years on
27 the board. It's been different for me, since my background has
28 all been, my professional background, has all been community

college work. My first job was in community college, and my last job was with the community college as my own business, for ten years doing government relations and other human relations types of work with different campuses.

So it's been my life, and I'm glad to be serving as a volunteer now.

CHAIRMAN PERATA: Thank you.

MR. REED: Good afternoon.

I'd like to thank Senator Ashburn for his comments.

One of the things that really brings me to this opportunity is that I come from a rural area. And I think that's important because so many of my colleagues on the Commission, on the Board of Governors are from urban areas. And many of the rural problems are somewhat different than the urban problems.

And I think that I can add a perspective that maybe isn't being shared at this time.

The other issue is that I'm a small businessman. I have to meet a budget each week, and I have to meet a payroll. And that's somewhat different than some of my colleagues, and I think that is another interesting perspective.

I've outlined four areas that I'm really interested in working on. I'm particularly concerned about the cost of text books as it relates to the college fees. I think something needs to be addressed in that area. I know it's been looked at in the past, but I don't think that we're doing fair by our students.

I'm very interested in distance learning. We discussed that yesterday in a preliminary hearing as it might affect prisons and the like, but we have instituted in the community college that I serve a distance learning program with Cal. State Bakersfield that was very effective. And I think that could be broadened on a statewide basis.

I'm also very interested in the basic skills issue. I've only been on the board for three meetings, but it's very apparent to me that there's a problem that really needs to be addressed on a statewide basis at both our level and at the K-12 level.

And I think the last is one that I have a particular interest in, is the cost related to the bond issues for school buildings. And I think the foundations that serve the community colleges could play a larger role.

And I'd be more than glad to expand on those issues, if the Members have questions regarding those.

Thank you again.

CHAIRMAN PERATA: Thank you.

Members?

I just had a couple of brief questions. One is, in the 2005-2006 Budget Act, there was a report requested on the strategies to reach low-income and disadvantaged students.

You haven't been there long enough, but do you have any idea where that report might be?

MS. HALEY: No, I'm sorry. I do not.

But I would like to know, do you mean the -- I have some information on the Financial Aid Report. Is that it?

CHAIRMAN PERATA: Yes.

MS. HALEY: Yes, and that did come up in terms of the review yesterday. And I have some information about it which says that, "It will be on the appropriate desk in about a week."

How do you like that?

CHAIRMAN PERATA: The appropriate desk.

MS. HALEY: Yes, I'm not sure which desk. Not mine. Do you want it on your desk?

CHAIRMAN PERATA: Did Drummond tell you that that's where it's going to go?

MS. HALEY: No, a staff member gave me that information since our meeting yesterday.

CHAIRMAN PERATA: Write that down. That's a great line. It's a super dodge.

MS. HALEY: But I am more than that, in a more serious note, am concerned about not only that report, but the reporting timelines that are needing to be met by the Chancellor's office.

There isn't any reason why a board member would know this unless it was asked of us, so I'm happy to have the information back to say whatever desk it's supposed to be on, it will be.

CHAIRMAN PERATA: If you'd just let us know what desk that was.

MS. HALEY: But I believe that what I've seen in the last few years that I've been doing this is, that more and more pieces of legislation are coming to the Chancellor's office

with requests for oversight, and information back, and reports back. And they have had a 45 percent cut in staff as of three years ago.

And the one -- one of the most important things that we do as policy makers is to do oversight for a number of pieces of legislation that come through. And we have to have the staff to do it.

It's continued to be a request in terms of additional staff, and I have not understood that there's been much that's happened.

So, I wasn't surprised to hear that the report was not there, but I am delighted to say that it is on its way. But I believe that there are other reports that we're responsible for.

And it leads me to ask the questions of the Chancellor and our Vice Chancellors: What are the reports that are regular? What are regulatory reports that we are requested as an institution to get to the Legislature? Are we doing them in a timely fashion? If we aren't, why aren't we?

I've heard the staff concerns about that. And I'd like to know about it beforehand, before somebody else asks us, where are they?

CHAIRMAN PERATA: You're on the right track.

MS. HALEY: I mean, I just believe it's our responsibility as members of this board to know that. And I don't like to have to find out about it over here. I would rather be told by the staff, and the Chancellor, and the Vice Chancellors what is happening.

CHAIRMAN PERATA: Also, once you get a report, oftentimes there's recommended action to be taken. And once that action is taken, to follow it.

And you're right. I think the word oversight, it's the best shot you've got on being a volunteer board, is the oversight.

MS. HALEY: And that is what we expect to be able to know as we sit there on that board from our staff members.

CHAIRMAN PERATA: Good. We're on the same page.

Mr. Reed, on the basic skills, I assume that your interest has something to do with what's happening with the exit exams.

MR. REED: Well, it does. And the fact that under the strategic plan that the Board of Governors has been working on for some period of time, it identifies the shortfalls. And the fact that with this growing population, that we have more and more immigrants coming into this state that lack basic skills. And better than 50 percent of our students graduating from high school don't have the basic skills.

I spoke to an organization that's trying to get Cal. State Fresno to come to COS, which is the community college in Visalia. And basically, President Welty has said, you know, "Give us students that have the skills, and we'll bring the program, but we're not going to come down and do entry-level high school math and science."

And that's another issue related to basic skills. But we have so many of our students that are just not

passing the exit exams, and we have so many -- and I know in my area, there is a large percentage that are migrant workers, and that type of thing. And they just really struggle with basic skills in the K-12 program.

I think we need to reach down from a community college perspective. And the strategic plan outlines that, to work more closely with those institutions to bring up those grade levels and identify.

And I think one of the things is that we had the Academic Senate appear before us recently and advocating increasing the level, if you will, of the math requirement for graduation from the community college.

And I think really when we talk about issuing an AA Degree from a community college, it really needs to mean that it has some teeth in it. That it's something that we can tell a future employer that it's a quality education. And I'm not sure we can do that at the present time, that we have lowered our expectations to a level where many of our students graduating really don't have the basic skills that they need to enter the workforce.

And I'd like to work in that area.

CHAIRMAN PERATA: Spoken like a teacher.

MR. REED: Well, 20 years ago.

CHAIRMAN PERATA: It's hard to wash out.

What's COS?

MR. REED: College of the Sequoias.

SENATOR ASHBURN: My alma mater.

CHAIRMAN PERATA: I've got to get out there one

of these days.

Well, I'm not going to prolong this. I just want to thank you both for doing what may well not be a thankless job, but pretty close. I'm glad you're doing it as volunteers. You can only persuade and cajole.

I would wish you both well. From time to time, you know where he lives. And unfortunately, she'll be working up here across the street. But you'll have a replacement. You're down one vote, but you'll be up three more.

[Laughter.]

CHAIRMAN PERATA: So, just drop us a note every now and then.

We have a motion to approve. Please call the roll.

Do you have anybody here who wants to talk about any of this? Any family here? I pretty much, looking at the crowd, assumed that. Most of you work for us.

SENATOR BOWEN: It's not a question, but in reading the answers to the questions, Ms. Haley raised as a potential project to work on with regard to the fee waiver program, is the idea of a book grant program, a text book grant program.

I really want to encourage you to do that, because the cost of materials, text books, supplies for students who are in a major, whether it be art supplies or whatever other supplies, often far exceeds the cost of the fees at the community college level.

So, I would really like to encourage you. I'm

1 going to try to identify a Member who will be here to work on
2 that, because I think it's very important.
3 MS. HALEY: Thank you very much, and I couldn't
4 agree with you more. It's been a growing problem over the
5 years, and we've recognized it, but we've not figured out a way
6 to approach it. I think it has to come through a fee waiver, a
7 book waiver type of process.
8 I think it -- I'm glad you can identify somebody
9 else.
10 SENATOR BOWEN: It doesn't have to be a
11 particularly expensive program.
12 MS. HALEY: No.
13 SENATOR BOWEN: But for many students, it will be
14 the difference between being able to attend classes.
15 MS. HALEY: Whether they come or not, exactly.
16 CHAIRMAN PERATA: Call the roll, please.
17 SECRETARY WEBB: Ashburn.
18 SENATOR ASHBURN: Aye.
19 SECRETARY WEBB: Ashburn Aye. Bowen.
20 SENATOR BOWEN: Aye.
21 SECRETARY WEBB: Bowen Aye. Battin.
22 SENATOR BATTIN: Aye.
23 SECRETARY WEBB: Battin Aye. Perata.
24 CHAIRMAN PERATA: Aye.
25 SECRETARY WEBB: Perata Aye. Four to zero.
26 CHAIRMAN PERATA: Four to zero.
27 Congratulations and thank you.
28 MS. HALEY: Thank you very much.

[Thereafter, SENATOR CEDILLO voted Aye, making the final vote 5-0 for confirmation.]

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 5:05 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of August, 2006.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 11, 2006

Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata:

Thank you for the opportunity to appear before the committee on August 23, 2006, relative to my confirmation as the Director of Finance. I appreciate your thoughtful questions and I am pleased to provide you with the following responses:

Background

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as Director of Department of Finance?

The immediate priority is to return the state budget to long-term balance. This will require a concerted team effort, involving the Department, our colleagues throughout the administration, the Governor, the Legislature and key stakeholders and constituencies. It is also not something that anyone believes can be accomplished in a single year. Working together, we have made significant progress over the last three years, but we have much work left to do. Until we have succeeded, I will remain focused on this task as my highest priority.

Our budget depends on a strong economy to bring in revenues. The Governor has made improving the business climate, job growth, rebuilding our infrastructure and strengthening the economy top priorities of his administration. I will do all I can in working with the Governor and the Legislature to further these efforts.

A major part of my role as Director of Finance is to be a careful steward of the Department and its employees. Above all, the Department's continued success depends on maintaining its high reputation for integrity. My first priority will be to ensure that we continue to earn the trust of the Legislature, rating agencies, the public, local governments and other state agencies.

The Department is central to everything we do in state government, and it has a long tradition of service based on inquiry, analysis and judgment. This has only been possible because successive administrations have taken care to nurture a supportive environment for staff, cordial and professional relationships with other institutions and staff, and dedication to the highest levels of integrity and accuracy. I have every intention of leaving this Department in better shape than I found it. This will take constant attention by me and my management team.

I also want to prepare the Department and the state for a future of better resource allocation and decision-making by upgrading the state's accounting and other information technology systems by transitioning to an integrated financial management system. This approach will allow the state to manage its financial resources and assets as an enterprise, and will provide decision-makers with the tools necessary to improve strategic decision-making for the state as a whole. Efforts toward this objective have begun in Finance's Budget Information System, known as BIS. Ultimately, California needs to move to performance-based budgeting, by which I mean a process of allocating resources based on outcomes, rather than inputs. This would offer the potential for major efficiencies as well as improvements in the services we provide. I do not believe, however, that this can be achieved both quickly and well. My goal is to start the state moving in this direction during my tenure so that my successors will be positioned to complete the task.

In the meantime, I believe there are significant opportunities to improve our decision-making process now. Attention to detail and scrutiny of all spending is a hallmark of the Department. I believe that we can improve our focus on higher-level fiscal policy issues without impairing our ability to control spending and ensure financial integrity.

2. **You have considerable experience within the state of California from your tenure at the Legislative Analyst's Office, the Departments of Social Services and Health Services and the Senate Republican Fiscal Office as well as Chief Deputy Director of Finance. What are the key considerations in being Director of Finance that are different from your previous experiences?**

In all but the last two positions, I was focused on a portion of the state's budget and programs. As Director I am responsible for them all. This means that I rely heavily on the work of the Department's subject matter experts. Rather than personally studying the details of every issue, my role is to provide executive leadership and support, to set realistic goals and direction, and to make sure that staff have the tools and the time they need to get the work done.

In my position with the Senate Republican Fiscal Office, I was focused on the priorities and goals of only one caucus. As Director, I must take into account the views and priorities of all four caucuses. I can serve the Governor best by understanding other perspectives, seeking solutions that have broad appeal, and ensuring that the Department continues to adhere to the highest standards of integrity, transparency and accountability.

In my position as Chief Deputy Director of Finance, I was focused on the budget and related matters. As Director, I oversee a much wider range, including policy issues related to various boards and commissions, the internal workings of the Department, and audits and reviews of state departments and programs. I also have a closer relationship with the Governor and a greater sense of personal responsibility for achieving results.

Management of the Department of Finance

The Department of Finance has about 430 positions and not only is responsible for the State Budget but also houses the State's Demographic Unit, an audits division and provides support for the State's accounting system.

3. How would you characterize your management style?

On the spectrum from micro-manager to delegator, I fall much more on the delegator side. As a former analyst and subject matter expert, this did not come easily. Like many who make the transition, it took some work for me to develop a habit of trust. I believe strongly, however, that: (1) managers—especially executive managers—have to rely on staff to do most of the work, and (2) the only way this can be successful is by fostering a sense of empowerment and trust to inspire and encourage staff to take ownership of and pride in their work.

Of course, a key element in this approach is accountability. It is very important for staff to know what the executive's goals for them are and how their success or failure will be assessed. The key to this is communication, the most difficult human task.

Dr. Gregory Bateson, for whom our Bateson Office building is named, said that complex human communication must be iterative. I always bear this in mind when setting goals and expectations. I know that I am not capable of imparting understandable and meaningful direction by declarative sentences alone, no matter how accurate or succinct. In fact, there must be a feedback loop. While dialogue is always more time-consuming than monologue, it is essential to leading an organization like the Department and I strive to keep two-way communication open.

Finally, I believe in the power of diversity of talent. Each person on my senior management team, including me, has different strengths. Combined, these strengths produce a synergy that strengthens each individual, extends our reach and breadth and makes us a more complete, informed and capable team.

4. How many staff within Finance work directly on the budget versus other areas? How do you respond to issues within other units in Finance given that the budget takes up the majority of your time and by definition is a high priority workload for the department?

The mission of the Department of Finance is:

To serve as the Governor's chief fiscal policy adviser,
Promote responsible resource allocation through the State's annual financial plan,
Ensure the financial integrity of the state.

The Department has about 430 positions to achieve this mission, and about one-third of them work directly on the budget. Each of the Department's non-budget line units also play crucial roles in furtherance of our mission.

The Office of State Audits and Evaluations and the Performance Review Unit ensure that programmatic and accounting requirements are adhered to, and thus promote accountability in budget administration. Also, findings from these units can result in specific and budget-related actions to capture savings or promote greater fiscal prudence in the future.

The California State Accounting and Reporting System Unit and the Fiscal Systems and Consulting Unit provide the vehicle and rules for proper and consistent accounting. In so doing, they foster the state's ability to track its revenues and expenditures and thus provide potential feedback loops for improving accountability and efficiency through audits.

The Demographic Research Unit provides the data for many formula-driven programs with huge fiscal implications.

The Financial Research Unit provides the economic and revenue forecasts that are the very foundation of budget planning.

The Office of Technology Review, Oversight, and Security provides expertise and advice to the line budget units on proposed IT expenditures. In addition, this unit works in tandem with the line budget units to analyze large IT projects and anticipate potentially significant fiscal-related problems with these projects in advance.

As the Director, I rely on my outstanding executive staff to help me provide oversight, guidance, and decision-making throughout the department. These executives assist me with various issues and in running the department on a day-to-day basis. Working as a team, we ensure that we meet established goals and objectives, perform the Department's mission and live up to its core values.

5. What do you consider to be the most important qualification someone should possess to work in budgets at the Department of Finance?

The Department's core values are integrity, expertise, problem-solving, teamwork and respect. These are also the most important qualifications to work in the Department. Not only do we recruit and hire with these values in mind; we have an extensive training program that emphasizes them and helps staff to develop the knowledge and attitudes needed to adhere to them on a daily basis. Our management team also evaluates staff in these areas. They are trained to coach and counsel staff and to take corrective action if needed. Our executive team reinforces these lessons and supports management's efforts in staff development and training. Beyond the core values, we clearly look for analytical skills and work ethic in those we recruit. We are among the few agencies that require recruits to pass a rigorous math and writing test to be considered for employment. All of these efforts are necessary to maintain the Department's long-standing and well-deserved reputation as a reliable source of accurate information and to maintain our strong working relationships with other agencies, the Legislature and members of the public.

6. What priority would you place on staff doing field trips in order to better understand program issues? What is your rationale for prioritization?

I believe that one can never fully understand an issue or a program without seeing it in operation and talking to those who operate it, do business with it or receive services from it. We encourage all budget staff to make three to six field visits each year. Given our workload, this is a challenging and difficult goal. It is one that we do not always meet, especially when the normal ebb and flow of budget work is interrupted by other priorities such as mid-year

reductions, heavy bill workload and projects such as this Spring's infrastructure bond package and the current special session on prison overcrowding. Nevertheless, we continue to make field visits a priority.

Since being appointed Director, I have shown by my own example how important it is to see programs firsthand. I have visited highway projects in San Diego, ports in Los Angeles and Long Beach, forestry projects at McClelland Air Base and Nevada County, water projects and levee repair sites around Sacramento and the Delta, San Quentin State Prison with the *Plata* Receiver and the state's Child Support Automation System.

The State has a 2006-07 General fund Budget of $101.3 billion with General Fund resources available of $103.4 billion but General Fund revenues of $93.9 billion. The State faces a chronic structural budget deficit. The Department of Finance recently indicated the "ending balance" in 2007-08 would be minus $3.6 billion. At the same time, it indicated the Gross Operating Deficit in 2007-08 would be $4.4 billion. Given various assumptions and pressures on the budget, it is likely the deficit will be larger next January.

7. **Given the various calculations used to identify the deficit, what calculation do you believe is the most important to use to identify the state's fiscal health? Why?**

A state could be said to be fiscally healthy if its baseline forecast of expenditures were projected not to exceed its baseline forecast of revenues over the long run. A baseline forecast would be one that assumes no changes in current policy, law, entitlements, tax rates and rules, etc.

Of course, long-term forecasts are inherently subject to significant error. This is why we tend to look at more immediate measures, such as the operating deficit in the current or budget year. Operating deficits – the excess of expenditures over revenues – are a good proxy measure of fiscal problems in the future, because they point to an imbalance in the base budget.

We also recognize that there may be discrete and quantifiable elements of our expenditure and revenue estimates that are temporary, such as money used to make early payments on debt or for one time investments in infrastructure (e.g., the $500 million General Fund appropriated last year for levee repairs). It is therefore appropriate to discount the gross operating deficit or surplus in any given year for these factors, thus yielding what I consider to be the best and most practical gauge of fiscal health—the net operating deficit/surplus.

We have been steadily reducing California's net operating deficit, which tells me we are on the road to good fiscal health.

An even more immediate measure is the constitutional test of a balanced budget. The Department characterizes any projected negative balance for the budget year as the budget problem. At a minimum, we know that we must propose a balanced budget, which means we must identify solutions at least equaling the identified problem. California has never enacted a budget that projected a negative balance, so we have always found enough solutions to solve the problem, based on the projections of expenditures and revenues available at the time of budget enactment.

The state's current structural budget deficit can be traced to past solutions that fell short of their goal, the expiration of one-time solutions, or unexpected changes in the underlying projections used in the enacted budget. Such problems will always arise, but it is important to make sure all of us involved in the budget process have a common understanding of what is driving them. This is why this administration has emphasized truth and openness in budgeting. We have worked to ensure that the key assumptions underlying the budget are conservative and reasonable. In our effort to ensure transparency, we have increased the kinds and amounts of back-up information that we provide to legislative staff, and we have accelerated the timing of much of the information. Finally, we have provided baseline forecasts, strictly adhering to the definition of a workload budget in Government Code Section 13308.05 at each Governor's Budget and May Revision, thereby minimizing any technical disputes as to the basis for our estimates.

Beyond these quantitative measures, it is also very important to evaluate qualitative measures, such as the quality of the state's decision-making process. The willingness of the state's leadership to make policy changes to protect the state's financial condition can overcome weaknesses in the baseline budget. This year has shown that the Governor and the Legislature are willing and able to be realistic about fiscal trade-offs and to take action when needed. This bodes well for the state's future fiscal health.

8. Given the continued structural deficit, what programs or program areas would you identify as the state's priorities for funding?

My first obligation as Director of Finance is to ensure that each budget is balanced. I recognize that there are always competing priorities that must be reconciled to achieve this end.

The state constitution guarantees that education funding and repayment of bonds will have priority for state funding. Our retirement systems represent long-term and irrevocable commitments to current employees and retirees. The federal constitution guarantees our vendors and employees that we will not abrogate our contracts. The state has assumed statutory obligations to vulnerable and needy Californians. Finally, we must continue to foster job growth by avoiding tax increases. Balancing all these priorities is often difficult. But in the end, we have to do it because the entire state benefits when Sacramento balances the budget.

9. What do you see as the top three challenges facing the State in the next five years that should be addressed through the state budget?

a. The Governor recently sponsored a conference on health care affordability. It was clear from the discussion at the conference that the problem of the uninsured and the problem of affordability are inextricably linked. One participant noted that studies show that for every one percent increase in health care costs, the nation's uninsured population increases by 300,000. Clearly, as California moves toward a goal of coverage for all, we must simultaneously find ways to reduce costs.

This also applies to the Medi-Cal program. Even though California's Medicaid program is the most efficient in the nation, it is still unaffordable in the long run. For example, a recent study by the Public Policy Institute of California projected that Medi-Cal's share of the state's General

Fund budget will increase from 15 percent in 2003 to 21 percent in 2015. Unaddressed, this growth will severely reduce all other state services.

The study also noted that 60 percent of Medi-Cal expenditures are made on behalf of 5 percent of beneficiaries. This suggests that we need to look for ways to better manage the care of the most expensive Medi-Cal clients. We cannot do this overnight. It will take experimentation and study. However, we have no choice but to deal with the issue of the affordability of Medi-Cal in our budgets for the next several years.

b. The state's prison system has grown from 2.9 percent of the General Fund budget in 1980-81 to 8.6 percent in 2006-07. Over that same period violent crimes committed per 100,000 Californians have fallen from 886.9 to 512.3, a 42-percent decrease. There is no question that lives and property have been saved by the improvement of the state's law enforcement capacity and the expansion of the prison system that keeps criminals off the street.

At the same time, the state will struggle to accommodate unchecked growth in the costs of operating our prisons. Prison health care costs will be a major challenge as the state works with the receiver to improve health care in the prisons. Controlling prison cost growth, through reduced recidivism, cooperation with the receiver and more efficient operation of the prison system in general, will be a priority in state budgets for years to come.

c. It comes as no surprise to members of the committee that California's record of successful automation is checkered. We have had our successes, but our failures have received more attention. Throughout the American and world economy, productivity has increased dramatically over the past several decades as a result of effective automation. California has lost billions of dollars over the years due to lack of automation, ranging from the federal penalties we pay due to our failure to automate child support to hundreds of millions wasted for lack of automated health records in the prison system. We need to accelerate our efforts to achieve greater efficiency and better public service through automation. This will be a constant theme in the state budget for years to come.

I expect the Department to play a large role in fostering successful automation projects. Examples of projects we have supported in recent years include:

- The California Longitudinal Pupil Achievement Data System, which offers major opportunities to improve our K-12 schools by providing accurate and timely performance data;
- The Child Support Automation System, which can relieve the state of hundreds of millions of dollars in annual federal penalties and greatly enhance collections of funds owed to custodial parents;
- The Controller's 21st Century project, which will modernize our payroll and human resources management systems;
- The enterprise resource planning systems now in operation or under development by the departments of Transportation, Water Resources and Corrections and Rehabilitation;
- The Department of Motor Vehicle's system improvements to accommodate customers' ability to transact business on the Internet, which will further reduce delays and expedite better service to motorists.

More directly, the Department is in the beginning stages of planning for the statewide Budget Information System (BIS) system, which will weave together the other state enterprise resource planning systems and modernize and upgrade the entire state's financial management system. The new system will support management information that will be used to improve efficiency and effectiveness, and can ultimately be used develop a performance-based budgeting system for the state.

10. Do you concur with the results of the recent salary survey which showed that state employees in several areas are under compensated when compared to their local and private counterparts? Given the structural deficit, how can the state bring equity to the salaries of its employees?

I was an early and strong supporter of doing the survey, and I continue to believe that we serve the people best when we have full and complete information on which to base decisions. I believed then and believe now that the state needs to have a competent workforce. To achieve that, we need to understand the labor markets in which we compete for workers. However, the survey alone does not tell the entire story. We also look to vacancy rates as an indicator of our ability to attract employees. All these factors, of course, must be considered in the context of the state's budget constraints. I believe that our recently negotiated MOUs reflect a reasonable balance of all these considerations.

It is also important to note that the survey is far from complete. Future surveys will attempt to refine our ability to compare state and private total compensation packages. I believe they will find that the state overcompensates some categories and undercompensates others, when compared to the private market.

Nevertheless, the survey shows clearly that in almost every category, the state significantly undercompensates relative to local and other governmental organizations. It should be noted, however, that this first survey did not analyze public safety categories. They will be covered in the next survey.

While accepting the challenge to remain competitive will undoubtedly result in costs, reducing vacancies and ensuring that we have a qualified workforce will also save money in reduced overtime and better productivity.

11. Most of the department heads that come before the Rules Committee during the confirmation process describe significant number of managers who are at or near retirement and insufficient numbers of employees trained to replace them. What should the Department of Finance's role be in implementing succession planning in state government?

The Department of Finance has a limited role in implementing succession planning throughout state government. Departments, with advice and direction from the Department of Personnel Administration and the State Personnel Board will need to develop their own plans for ensuring that they will continue to provide services to their constituents. During 2005-06, the State Personnel Board began presenting workshops focusing on succession planning, and plans to

continue providing such workshops in the future. The State Personnel Board has also provided assistance to specific departments when requested to do so. The Department of Personnel Administration has created a web page to assist departments in their succession planning efforts, and is working with the Department of General Services to develop a master service agreement and list of contractors that departments might engage to assist with succession planning.

The Department of Finance has been facing the challenge of succession planning for many years because many of our key staff leave the Department of Finance for positions in other departments or the Legislature. Our response to this personnel dynamic has been a combination of efforts, starting with recruiting people that we believe will be able to move into management positions, and training them through formal classes and supervisory direction to be ready to assume the duties and responsibilities of their supervisors. We also continually review what duties and decisions can be delegated to lower levels in the organization, so we are not as dependent on people at only the highest level to execute our duties and responsibilities. Finally, we are exploring how we might restructure some of our positions to take advantage of Retired Annuitant and Partial Retirements programs to benefit both the department and the employees approaching retirement.

Fiscal Estimates for Legislation and Legislation Containing Mandates

The Department of Finance has traditionally represented the Governor's Office at legislative fiscal hearings in order to provide the Legislature with cost estimates of proposed legislation. In addition, the Department of Finance is statutorily responsible for providing fiscal estimates of new mandates contained in proposed legislation (Government Code Section 17576).

Over the past years, it appears that the Department of Finance has analyzed fewer bills, particularly in the house of origin, making it difficult for the Legislature to assess the potential costs of bills. This issue continues to be of concern to the Legislature.

12. Do you believe the Department of Finance should continue to provide the Legislature with fiscal estimates on bills? Should Finance provide more analyses and provide them at an earlier hearing than may happen now? If so, what is your plan to ensure this happens?

I do believe that it is important for the Department of Finance to weigh in on legislation, and I am ready to work with the Legislature to help meet your needs. In fact, I believe we have made some progress over the past few months. Specifically, if analyses have not been completed in time for the appropriations hearing, staff now are completing some of those analyses after the hearing date, time permitting, in order to provide more input. In addition, arrangements made with legislative staff to receive potential hearing agendas earlier than in the past have been a big factor in helping us to complete more analyses prior to the hearings.

But, as with any organization, we have had to set priorities and make workload choices to get the work out with the resources available. It is interesting to note that over the past 10 years, in terms of total percentage of statewide General Fund, total funds, and personnel years, funding

and staffing for the Department of Finance have steadily declined. For example, in 2005-06, General Fund spending increased 16.2 percent, whereas General Fund spending for the Department of Finance increased five percent – and actually declined as a percentage of statewide General Fund spending. In 2006-07, General Fund spending will be up 9.2 percent, whereas Finance spending will increase 2.9 percent, and again will decrease as a total of statewide spending.

Unfortunately with regard to analyses completed for the first house appropriations hearings, those hearings coincide with the preparation of the April adjustments to the Budget and the May Revision. With the extraordinary challenges we have faced over the past few years, we have had to direct the bulk of our budget staff resources to addressing potential deficit reduction solutions, while working with other agencies to maintain essential state services and programs. The demands on staff time are further compounded by our desire, as noted above, to encourage staff to make site visits in order to better understand their programs, and our desire to keep overtime to an acceptable level.

Perhaps part of the solution to providing the Legislature with the information it needs on legislation may rest with prioritizing for analysis, with the Legislature's help, those bills with the greatest cost potential.

I believe our analyses are an important tool for the Legislature, and I am willing to work with the Legislature to provide more useful and timely information.

13. How do you believe the Department of Finance can provide the best information possible on potential mandate costs contained in pending legislation?

For the past several years, the Department of Finance has used a decentralized approach to reviewing state mandate issues. We have determined that the decentralized approach has not worked as well as we had hoped when we adopted it. Specifically, we found that we were not able to provide a consistent approach in reviewing mandate issues, and we sometimes did not have knowledge about how statutory and regulatory changes might affect local governments. With enactment of the 2006 Budget Act, we are re-establishing a State Mandates Unit.

With the limited resources available for the new Mandates Unit, it will be focusing on non-education mandate issues. The goal of this unit is to understand the mandates process, including the criteria and policies relied on by the Commission to make its determinations. The unit will initially focus on providing comments on the test claims, and proposed parameters and guidelines in order to understand the potential costs and reimbursement requirements associated with statutory and regulatory changes. The unit will also visit local agencies to better understand how tasks are performed at the local level and the varying interpretations of what new legislation requires. These activities will enable the unit to provide guidance and advice to Finance staff analyzing legislation that contains reimbursable mandates.

Program Service Delivery

California is one of about a dozen states where the state relies on local government to deliver services in federal and state programs, particularly in the health and human

services area. This means the state's role is primarily providing funding, oversight and technical assistance to local governments.

14. What unique budgeting problems does this governance structure create? What do you believe is the solution(s) to any identified problems?

One of the major budget challenges over the years has been to better align fiscal incentives and performance goals in these shared programs. Since the enactment of Proposition 13 and SB154/AB8, which implemented many of the fiscal changes necessitated by the measure, the state has struggled to better align fiscal incentives to help achieve better efficiency and performance in these programs. Much of my career in state service has involved these programs, and I have long advocated for improvements in fiscal incentives, and development of performance measures.

The realignment of the early 1990's represented a major step toward a better alignment of fiscal incentives in many of these programs. More recently, the California Department of Social Services, working in conjunction with the County Welfare Directors Association, has moved toward a more outcome-oriented approach in funding and operating the Child Welfare Services program.

I have no doubt that the state could achieve more cost effectiveness in other shared programs by continuing to align funding responsibility and accountability for program outcomes. Having participated in or closely observed most of the policy development in this arena over the last 25 years, it is equally clear to me that progress will not come from a single person's ideas, but will require dialogue among the Administration, the Legislature, local governments and constituency groups.

In the case of transportation funding and planning, authority for planning and project selection has been shifted from the state to local and regional agencies through a series of statutory changes. While this has enabled local priorities to be more fully expressed, it has led to a lack of focus at the state level on the overall needs of the state, and has often encouraged regions to select smaller projects and defer bigger projects, especially those that bridge between regions. The enactment of the transportation bond package, adding funding for the types of projects that have not been getting the funding they need, is one type of solution to this. Another is the statewide goods management planning effort lead by the BT&H and CalEPA agencies. It is likely that that effort will lead to proposals for public-private partnerships and other innovative financing and project delivery approaches that will need authorization outside the existing transportation program and budget processes.

15. What do you believe is the state's primary responsibility in the financial support of health and human services programs?

The state has a responsibility to ensure an adequate safety net for needy and vulnerable Californians. At the same time, recipients and beneficiaries of these services have an obligation to help themselves, whether by participating in services designed to help them be more self-supporting, by adopting healthier lifestyles and behaviors or just by being engaged in their own care.

to help themselves, whether by participating in services designed to help them be more self-supporting, by adopting healthier lifestyles and behaviors or just by being engaged in their own care.

We also have an obligation to the taxpayers to ensure that limited resources are properly targeted, that fraud, waste and abuse are eliminated and that programs are run efficiently. We must bear in mind that a more efficient system of services is a more sustainable system of services.

As your question indicates, in many cases the state relies on local governments to deliver services in many of the health and human services program. In these cases, we have an obligation to work closely with local governments to ensure efficient and effective service delivery.

16. How would you suggest the state evaluate the performance of the service providers in the state? Is such an evaluation possible if the determination is made that the program in question is not adequately funded?

I believe that programs should be evaluated based on whether they meet objectives and achieve clearly defined goals. Providing goals and expectations allows local governments to prioritize limited resources to meet these objectives. Focusing on inputs—for example, dollars provided—misses the point. We could double the funding for a program and not see any improvement. It is only by focusing on outcomes or performance that we ensure that our investments bring results.

Even when there is a determination that a program is not adequately funded, evaluations can be quite useful. It can tell us whether a program is meeting its objectives, illuminate the reasons it may be falling short and provide possible solutions, among which may be increased funding. It is important that evaluations examine how programs are spending their existing resources and determine whether efficiencies are possible.

An example of an outcome-based program is the state's child welfare system. In this system, we have measurable objectives that the state can use to gauge the success of its investments. AB 636 moved the state away from an input-based model, in which the target was a ratio of workers to clients, and instead focused on measurable outcomes that are related to a better quality of life for children in this system.

While performance goal setting starts with the operating agencies and must be vetted through the budget process, the Department has an important role in the actual evaluation of performance. Specifically, we have two units within Finance that review and evaluate the performance of persons and organizations providing services for state funded programs: the Office of State Audits and Evaluations, and the Performance Review Unit. These units have provided, and will continue to perform reviews of state-funded activities when requested by departments and the Legislature.

In the long run, I believe we as a state need to move toward a system of performance management—based on systematic strategic planning, performance measurement, and

administration, the Legislature, and the public on state agencies' and programs' missions and goals (i.e., what should be accomplished). Consensus would also be needed on performance measurement (i.e., what constitutes "success" and how it should be measured). While this effort can not be brought to fruition in the short term, it is essential that we begin preparing and the Department will do its share.

Role of the State in the Financial Support of Local Programs

Proposition 1A was passed by the voters in November 2004, to preserve local government revenues for local programs and services by constitutionally preventing future property tax shifts by the state. Even with stable and secure revenue sources, local government often looks to the state for additional funding for what have been traditionally local programs (e.g. juvenile justice probation; funding for the Mentally Ill Offender Program; the COPS program, Booking Fees, etc.).

17. You were instrumental in negotiating Proposition 1A. Given that a couple years have passed, do you think you would negotiate the same agreement or are there additional issues that should have been taken into account? If so, what are those provisions and how did you come to that conclusion?

We never envisioned Proposition 1A as a major reform or realignment in the state-local partnership. Its purpose was to draw a clear boundary around local revenues and foreclose any option for the state to expand its taking of local property tax revenue through a future ERAF. It clearly accomplished that purpose.

During the pendancy of the proposition, many potential major reform issues were discussed, including changing the local property tax/sales tax mix to encourage new housing development to locate closer to existing urban centers. We pursued this issue with great interest. However, there was no consensus that the local sales tax was actually a significant culprit in sprawl, or that shifting shares of the two taxes would accomplish the desired policy outcome and avoid unintended adverse consequences for localities that had invested in substantial growth under the existing regime. The administration remains quite interested, however, in finding ways to reduce sprawl, relieve congestion, and encourage transit use. We believe there are several promising options for doing this that do not require changing the mix of sales and property taxes. For example, Proposition 1C provides funding for "transit villages" and Proposition 1B provided funding to expand transit systems.

Proposition 1A made some major improvements to the law on state mandated programs. We are working to extend those gains administratively and appreciate the Legislature's support this year of our proposal to move forward with a mandates unit in the Department. As all of us who were involved in developing Proposition 1A agreed at the time, there is much work that can be done to improve and expedite the entire mandates process, and we are committed to continuing to work with the Legislature in that regard.

Finally, we need to continue to look to improve fiscal incentives in the shared programs to enhance efficiency and effectiveness. I believe that Proposition 1A leaves us flexibility to do this

Finally, we need to continue to look to improve fiscal incentives in the shared programs to enhance efficiency and effectiveness. I believe that Proposition 1A leaves us flexibility to do this without having to further amend the constitution, although I do not dismiss the possibility that some day we could achieve consensus to go even further.

18. What is your position on the state's role and responsibility in the financial support of local programs?

The state clearly has an obligation to fund programs that it mandates on local governments. As indicated in previous answers, we also have a significant role to play in shared programs, especially in the health and humans services arena; and, we have on obligation to ensure that those programs are efficiently and effectively operated.

With the enactment of Proposition 1-A, and the strong growth in property tax revenues that has occurred since its enactment, local governments have more reliable local revenues and greater capacity to address local priorities. The full funding of Proposition 42 and the early repayment of loans against that local revenue stream, has further improved local capacity to address local priorities. While state and local governments will always be partners, these improvements in local fiscal conditions will help local governments to continue to shoulder their share of the load.

Sincerely,

MICHAEL C. GENEST
Director

Questions to be answered for Senate Rules Committee
Submitted by Benita D. Haley
Due July 24, 2006
Confirmation Hearing August 23, 2006

STATEMENT OF GOALS

1. Goals you hope to accomplish while serving on BOG

- Supporting a sustained momentum for the implementation of the CC Strategic Plan
- Building more respect for and awareness of the CC and the service they provide the students and the State population
- Improved flow from K-12 to the CC districts, CSUs, UC,s and the private colleges so that students can move seamlessly through the education system of the State.
- Closer working relationships with K-12 leadership at State Board level and the BOG to develop solutions to our mutual problems of adult education, basic skills, and the high school drop out rate.
- Developing a way for the BOG to hear from and work with the State business and industry leadership on their ideas of how the CC education can be improved and relevant
- A planned basic skills approach adopted by all districts that moves a student through a prescribed series of courses based on their knowledge at the time of college entry

PREPARING FOR THE FUTURE

2. What are the major challenges facing the CC?

A. The major challenges facing the CCs appear to be

- a larger part of the high school age students are dropping out and later coming to CC w/o basic reading and math skills
- growth in the minority and senior citizen population and the population in general who need or want to attend CCs
- unnecessary duplication of expensive programs in adjacent colleges
- lack of course alignment between CC, CSUs, and UC therefore causing students delays in completing their degrees or certificate programs at an additional cost to the State
- high school adult education courses and CC basic skills courses are not coordinated,aligned or articulated
- business and industry are stating that they need employees that can read and understand and use math at a higher level than the CC are producing

B. How will the BOG use the strategic plan to take a leadership role in addressing these challenges?

The BOG has taken a leadership role in addressing the challenges by developing a strategic plan -- the first one of its kind for the CCs. The very process that was put in motion by the BOG through a generous grant allowed the System to go out into the field and listen to ideas and suggestions about the plan and its parts from managers, faculty, classified staff, student's and community member's. The BOG will be reviewing and assessing the plan as it progresses as it moves along its path.

3. **How does the BOG plan to work with the key constituents to implement the many changes that are required to accomplish the goals identified in the strategic** plan?

The key constituents were part of the planning and development process of the strategic plan. The constituents were community college representative stakeholders from the system office, colleges districts, community, and other segments of education, business, and state agencies.

The BOG has adopted the Plan developed by the representatives and now the implementation phase begins. Key constituent groups will be part of the overall implementation structure composed of goal areas and action plan groups.

4. **How will the BOG monitor progress?**

The BOG through the Chancellor and system staff will continue to receive updates regularly on the progress of the implementation. An Implementation Oversight Committee [IOC] composed of a wide range of internal constituents and interested external bodies and partners including other segments of education, labor, business, industry and State government will soon be formulated to oversee the implementation process for the Plan. The BOG authority to implement the Plan is shared with the Districts [72] elected Trustee. Implementation will only go well if both bodies continue to work well and cooperatively.

5. **What work is the Board doing to balance the need to address long-term strategic systemwide goals with locally driven priorities?**

The BOG pursued the strategic planning process recognizing that there are and will be differences between locally driven priorities and systemwide goals. The work that the BOG has done to recognize the potential difficulties began by a planning process that was all inclusive of interest groups of every segment of the community college educational system. The process of implementation continues to be representative all of those segments. In the interests of the students that are served, the BOG authority and the local authority can solve their differences.

BASIC SKILLS NEEDS OF COMMUNITY COLLEGE STUDENTS

6. **What is the BOG doing to ensure that more community colleges students are successful in completing basic skills education and moving into degree-applicable course work?**

One of the major goals of the BOG Strategies Plan is to develop implementation/action toward the goal of students completing basic skills education in English and math. A goal implementation team has been formed and concluded that two areas of greatest priority at this time are strategies of:

1) basic skills/foundation for student success and
2) assessment and placement.

At a BOG Retreat in July, it was concluded that priority strategy #1 will begin this summer which will be to review literature and best practices to determine how best to increase retention and success rates of basic skills students.

The plan is to examine how people learn and what teaching methodologies, strategies, and support structures best promote the learning process or what works best to facilitate increased performance levels. Findings will be analyzed with broad participation and input and features of exemplary programs will be drafted throughout 2007. The next step is to assist colleges implement the successful features identified. Faculty/staff development throughout the implementation period is planned.

7. **Given the projected growth in demand for basic skills courses at community colleges, what is the Board doing to build capacity to meet this demand? What is the Board doing to examine the effectiveness of these courses and programs?**

In 2006-07 the colleges will be directed to use a portion of overcap funds for the review of literature and best practices described above. It is also expected that the BOG will request budget dollars for 07-08 to implement the best practices features as determined by the Plan goal of Basic Skills/Foundation for Student Success, described in #6. Following implementation, a report to the BOG will evaluate and report on the "success" of the practices.

The BOG receives continuous reports and updates from the staff in regard to the progress of the Strategic Plan.

8. **What policies are being developed by the Board to guide colleges in providing basic skills courses that help students pass the Exit Exam?**

The BOG will issue to all CCs a "Request for Applications" for grants to establish projects that are local partnerships between high schools and CC to offer courses, workshops, seminars, tutoring, learning communities, technology mediated assistance, and other instructional methods designed to help students pass the California High School Exit Exam (CAHSEE).

The colleges will be required to work in collaboration with local high schools to identify students and develop programs that meet their needs. The information about the Request for Applications for the grants will place a special emphasis on those segments of the high school populations that have the lowest pass rates, e.g., English Learners, minorities, and economically disadvantages.

EARLY ASSESSMENT

9. **What is the BOG doing to encourage colleges to work with K-12 schools to align educational standards, assessment, and coursework to better prepare students for successful completion of a community college education?**

In the Strategic Plan it is acknowledged that K-12 curriculum and assessments do not always adequately prepare students for college work. The Plan recommends that college requirements be reflected in the high school curriculum, that high school students and their parents have clear understandings of what it takes to succeed in college, and that the colleges work toward increased alignment with K-12, noncredit programs, and adult schools. Specific initiatives addressed in the Plan include:

- Early Assessment – (1) Collaboration with the CSU early assessment program existing in K-12s to increase the students preparation levels and alignment of curriculum and (2) Identification of options to align high schools and college assessments so that they reinforce each other.
- Curriculum Alignment - Participation in state-level dialogues to increase the alignment of curriculum between colleges and K-12.

10-A What has the BOG done to encourage colleges to begin using a common academic standard for assessing college readiness?

If past urging methods were used by a prior BOG, they have obviously not been successful. The independence of each district and their faculties has sometimes made movement forward on issues of this type negligible.

10-B What direction do you see the system moving in aligning entry-level academic standards between the campuses?

An Action Plan Group (APG) of the Strategic Plan has been formed to address Early Assessment and Curriculum Alignment mentioned in #9. In addition the APG will address Enhanced Alignment of K-12 and CC Standards and Curriculum as well as Curriculum and Assessment Processes.

The direction that the system is moving through the Strategic Plan and the overwhelming involvement of all interested parties in the success of the Plan holds exceptional promise.

STUDENT FEES AND AFFORDABILITY

11. Does the BOG support the establishment of a long-term community college student fee policy? What would be the key features of such a fee policy?

Yes -- The BOG adopted a Statement of Principles and Policies for CC Fees and Financial Aid in 1987. The policy has been reviewed and reaffirmed a number of times since then. The policy states:

- CC fees should be low, reflecting an overall policy that the state bears the primary responsibility for the cost of CC education.
- CC fees should be predictable, changed in modest fashion in relation to the cost of education, and their burden should be equitably distributed among students.
- Financial aid should be sufficient to offset fees that may pose a barrier to the access of low-income students.
- Fee and financial aid policies should be consistent with fiscal and academic policies in supporting the dual objectives of access and excellence.

The BOG in 2003 strongly urged that fee revenue collected from community college students should be retained by the system and not used to offset general fund support for the colleges. Because fee increases have almost always come at time of fiscal crisis, increased fees leads to fewer students which leads to less state financial support which leads to districts cutting the number of classes and services.

HURRAH for the Governor for lowering the fees from $26 per unit to $20 per unit effective January, 2007.

12. What can the BOG do to increase the number of students who complete the Free Application for Federal Student Aid(FAFSA) form which could make them eligible for state and federal financial aid?

The BOG can:

- Support the continued funding for financial aid services. Making information and SERVICE to students who need financial aid easily available and accessible will increase the number of students that complete the FAFSA.

- Continue to prioritize support and funding for the system's effort to improve awareness of financial aid programs and to increase participation in those programs by targeting low income and disadvantaged populations in communities served.

  Pell grant participation is a strong indicator of the system's success in identifying, targeting and serving low income and disadvantaged populations. Pell Grant participation has grown by 20,000 students or almost 9% over the last two years due in large part to the State's $38 million investment in CC financial aid administration and outreach which enabled colleges to increase their financial aid staffing and enabled the system to develop the I CAN AFFORD COLLEGE.COM statewide financial aid media campaign that compliments local outreach efforts.

- Support the components of the Strategic Plan that focus on expanding and improving existing programs to enhance students' awareness of and access to available financial aid programs.

13. What improvements can be made to the BOGs fee waive program?

The BOG Fee Waiver program appears to be efficient, effective, and simple. This is reflected in the system's success in identifying targeted and serving eligible and prospective students. Over the last two years the fee waiver program has grown over 17% to more than 700,000 waivers. The students of California are grateful to the legislature and every Governor since CC fees were established in 1984 for fully funding the revenues that support the program.

Improvement? The skyrocketing cost of textbooks have prompted ideas of a book Grant program for the lowest income, most disadvantaged students based on the fee waiver model.

14. How can the BOG leverage various financial aid resources at the local, state, and federal levels to make college more affordable for students beyond just addressing student fees?

Broaden and strengthen the media and public relations effort through I CAN AFFORD COLLEGE.COM

- Encourage and have recognition rewards by the BOG for District foundations, businesses, industries, chambers of commerce, services groups that setup financial aid grants for CC students
- Support decentralized financial aid awarding models that permit colleges to direct aid under any of the various state and federal programs to identified students
- Suggest inflation protection features in program funding language
- Follow and encourage the Strategic Plan efforts to increase financial aid resources availability.

CAREER AND TECHNICAL EDUCATION

15. Why has the CC system been slow to distribute the $20 million funded in the 2005-06 budget for the Career Technical Education Initiative? What are the requirements for using the funding?

- Requirements for using the funding?

  SB 70 created an opportunity to align education with the economy and requires eight specific activities. Summarizing the activities, the funding is for a comprehensive improvement of Career Technical Education by assisting secondary schools to align and rebuild programs that link to California's high wage, high skill economy, as served by the CCs economic development program.

  This initiative required new partnerships and approaches.

- Pace of distribution of funds?

  The control language in SB 70 required creation of a plan of expenditure to be developed in conjunction with the State Dept. of Education and approved by the Director of Finance. The plan was approved at the end of October 2005, the start date for the implementing the initiative. A collaborative process has been used working closely with the State Dept. of Education and conducting interest group forums around the state.

  To date: 74% of funding awarded and projects are functioning

  20% of the funding is currently at the end of the application process (Application reading in July)

  (Strengthening existing K-12 Career Tech Ed. and Middle/Junior High School career development)

  6% of the funding is associated with Requests for Application that are being finalized

16. How have the community colleges collaborated with the K-12 community on the distribution of these funds and the requirements for receiving the funds?

- Ongoing collaboration exists; e.g., meetings with K-12 community directly; meeting with, listen to and using the work of Association of California School Administrators/ California County Superintendent, and California Tech Prep community; meeting with the Dept. of Education representatives.
- All interested parties must abide by the requirements of SB 70, the DOFapproved expenditure plan, and rules on competitive local program support.

NURSING EDUCATION

17-A What is the status of the distribution of Proposition 98 funds for increasing nursing enrollment slots?

The funds have been distributed to 39 projects across the state. Approximately 1,000 additional enrollments are anticipated as a result of the funds. The 2006-07 budget proposes to continue funding $10 million in ongoing Prop 98 funds to support increased nursing slots and unmet equipment needs. Funds will be distributed to CCs by the Chancellor's Office via the Request for Application process. In addition, pending legislation (SB1309, Scott) proposes additional investments for reducing attrition rates for nursing students and for recruiting and retaining nursing faculty.

17-B Have the colleges or the chancellor's office experienced any problems with the application for and distribution of these funds?

The BOG has not been advised of any problems. But the system office staff work load needs to be considered as more is expected from legislation that requires the system staff to perform at a high level. Additional quality staff is needed.

18. What, in your view, is the best strategy to reduce the attrition rate of students in nursing associate degree programs?

- The selection process for students to enter the nursing program needs to be refined. Both grades in prerequisite courses and past experience should be part of the selection process.
- Thorough and consistent counseling for the students before and during the training needs to be available.
- Students who do not show the capability to handle the rigor should be advised "out" early so that others can take their place.

19. What can be done to recruit and retain more nursing faculty?

- Increase their salaries
- Make moving from the AA degree program to the BA degree program seamless
- Recruit with information about the CC teaching calendar, good working conditions, and working with professionals
- Advise of child care facilities often on campus

SENATE RULES COMMITTEE

STATEMENT OF GOALS

1. Please provide a brief statement of goals that you hope to accomplish while serving as a member of the California Community Colleges Board of Governors?

I would like to accomplish four basic goals as a member of the Board of Governors.

A) I would like to work with the community colleges to improve the basic skill levels of our students. Re-establishing the value of an Associated of Arts Degree and what it would mean in the real world.
B) We need to expand our course offerings in the area of vocational education. These courses need to meet the needs of businesses in California.
C) Distance education has a great value to students, especially those who reside in rural locations. I believe we need to expand our resources for this section of our curriculum.
D) The availability and cost of textbooks have an impact on student achievement and their ability to attend community college. Costs are spiraling upward and creating a hardship on our students. I would like to work towards a legislative solution to this problem.

PREPARING FOR THE FUTURE

2. What are the major challenges facing community colleges? How will the Board of Governors use the strategic plan to take a leadership role in addressing these challenges?

The major challenges are numerous and I will summarize a few:

- Continual changes in California demographics as well as a projected increase of 45% to the states population by 2025 will require continual changes to meet the demands of our students.
- As I have already mentioned over one-half of incoming students need basic skills in math and English. This need will continue to increase as California's population continues to grow.
- We need to continue to find ways to bring our various educational segments in California together. All have separate governing structures and we need to improve the flow of students from one structure to another.

The plan of the Board of Governors is to implement a strategic plan with five goals:

- College Awareness and Access
- Student Success and Readiness
- Partnerships for Economic and Workforce Development
- System Effectiveness
- Resource Development

This was developed prior to my appointment to the board but I agree with the concept and the need to periodically review and assess the implementation of this plan.

3. How does the board plan to work with key constituencies to implement the many changes that are required to accomplish the goals identified in the strategic plan?

- It appears to me that the creation and adoption of the strategic plan is a key step in reaching out to our constituency.
- Through this plan we intend to include constituency groups in the implementation structure with Goal Area Teams and Action Plan groups.

4. How will the board monitor progress being made in meeting the strategic goals outlined in the system's strategic plan? Will the board have the authority to intervene if sufficient progress is not made by colleges?

- The board receives updates from staff as to the progress of the strategic plan. Additionally, the board has created an Implementation Oversight Committee. This committee consists of a broad diversity of representation from within and outside the system, including representatives from the legislature, the Governor's Office and the private sector.
- The Board has some authority to intervene if they see that adequate process is not being attained.

5. What work is the board doing to balance the need to address long-term strategic system goals with locally driven priorities? How will the board differentiate between making progress in meeting system wide versus campus strategic goals?

- I believe that locally elected Boards of Trustees should be responsible for addressing local priorities. It is the responsibility of the Board of governors to help provide local districts with the resources to deal with their local priorities.
- It is difficult for this Board to assess progress of each campus's strategic goals because it is a system that encompasses 110 colleges.

BASIC SKILLS NEEDS OF COMMUNITY COLLEGE STUDENTS

6. What is the board doing to ensure that more community college students are successful in completing basic skills education and moving into degree-applicable coursework?

- The strategic plan will help us move towards accomplishing this goal. Within the strategy is Goal Area B which identifies seven strategies:

1. Basic Skills as a foundation for Student Success
2. Assessment and Placement
3. Articulation with K-12
4. Intersegmental Transfer
5. Teaching and learning Effectiveness
6. Degrees and Certificates
7. Innovative practices in Workforce Education

- To address these strategies a Goal Area Implementation Team (GAIT) has been formed. This team has identified goals 1 and 2 as the highest priority.
- This was presented to the Board of Governors at a recent retreat and at the July 12th Board meeting it was decided to begin the process of developing a plan of action to help implement these identified goals.

7. Given the projected growth in demand for basic skills courses at community colleges, what is the board doing to build the capacity to meet this demand? What is the board doing to examine the effectiveness of these courses and programs?

- In addition to the Strategic Planning effort the Board is developing a BCP for the 2007-08 budget year. This plan is intended to address implementation of identified programs and the resources they will need to be successful.
- Within the 2006-07 budget, $750,000 of the basic skills over cap funds will be used to begin the review of faculty/staff development activities to support this effort.

8. The 2006-07 Budget Act appropriates $10 million in additional funding for Community Colleges to offer basic skills classes to K-12 students who did not graduate because they failed to pass the California High School Exit Exam. What policies are being developed by the board to guide colleges in providing basic skills courses that help these students pass the Exit Exam?

- The board of Governors plans to issue a Request for Applications for grants to establish local partnerships between high schools and community colleges. The purpose will be to offer courses, workshops, seminars, tutoring and other instructional methods designed to help the students pass the CASHEE. Colleges will be required to work in collaboration with high schools to identify students and help develop programs to meet their needs.

EARLY ASSESSMENT

9. What is the board doing to encourage colleges to work with K-12 schools to align educational standards, assessment, and coursework to better prepare students for successful completion of a community college education?

- The Strategic Plan recommends that college requirements be reflected in high school curricula and that high school students and their parents have clear understandings of what it takes to succeed in college.
- Two specific initiatives addressed in the Plan include Early Assessment, which is designed to help increase K-12 preparation levels and alignment of curricula. The second initiative is Curriculum alignment between colleges and K-12. This is designed to build on existing programs such as Cal Pass and Tech Prep, to avoid duplication.

10. Currently all colleges determine their own academic standards, which can vary in academic rigor from campus to campus. What has the board done to encourage colleges to begin using a common academic standard for assessing college readiness? What direction do you see the system moving in aligning entry-level academic standards between the campuses?

- As I addressed previously we have identified Curriculum Alignment between colleges within our system as well as K-12 as a critical step in our action plan that supports the Strategic Plan of the Board of Governors.
- We have formed an Action Plan Group to help Enhance alignment of the community college Standards, Curriculum and Assessment Practices.

STUDENT FEES AND AFFORDABILITY

11. Does the Board of Governors support the establishment of a long-term community college student fee policy? What would be the key features of such a fee policy?

- The Board of Governors supports the following principles and policies for Community college fees:

1. Community college fees should be low.
2. Community college fees should be predictable and changed only in a modest fashion in relation to the cost of education.
3. Financial aid should be sufficient to help offset fees that pose a barrier to low-income students.
4. Fee and financial aid policies should be consistent with fiscal and academic policies.

12. Many community college students, even those who receive a Board of Governors fee waiver, frequently do not complete the FAFSA, making them ineligiable to receive state and federal financial aid. What can the board do to increase the number of students who complete the FAFSA form? What can the board do to increase part-time student participation in the board fee waiver program and completion of the FAFSA form?

- Components of the Strategic Plan focus on expanding and improving existing programs that enhance students' awareness for financial aid programs.
- With the state's investment of $38 million in community college financial aid administration and outreach, community colleges have increased the Pell Grant Program by 20,000 students over the past two years.
- The Board is committed to increase the awareness of financial aid to high school students with new outreach, college awareness and expansion of service hours with students and their families.

13. What improvements can be made to the Board of Governors fee waiver program?

- There is ongoing discussion of creating a book grant program for the lowest income fee waiver recipients. This is a personal priority for me and I believe we could tie the eligibility of this type of program to FAFSA.
- The basic program is working since it has grown by 17% to more than700, 000 fee waivers over the past two years.

14. How can the board leverage various financial aid resources at the local, state, and federal levels to make college more affordable for students beyond just addressing student fees?

- We should support decentralized financial aid allowing colleges to identify their needs at the local level and award this aid within the state and federal parameters.
- A simplification of the process for application should increase participation.
- Establish an inflation protection feature that would allow the financial awards to keep pace with inflation and the increases in the cost of attendance.

CAREER TECHNICAL EDUCATION

15. Why has the community college system been slow to distribute the $20 million funded in the 2005-06 budget for the career Technical Education Initiative? What are the requirements for receiving the funds?

- This funding was made possible by SB 70, which also created the stipulation of eight specific activities prior to the distribution of these funds.
- Along with these steps was a legislative mandate that required creation of a plan of expenditure to be developed with the State Department of Education and the Director of Finance. This was completed in October 2005 and since this date 74% of the monies have been distributed over the past nine months. Of the remaining funds my understanding is that 20% is currently in the application process and 6% is still associated with Request for applications that are being finalized.

16. How have the community colleges collaborated with K-12 community on the distribution of these funds and the requirements for receiving the funds?

- It appears that this collaboration is ongoing. For example, in Sacramento upper management from CDE and CECOO conferred, and the program staffs have been working together in the program design.
- The 2006-07 budget proposes to continue funding $10 million in ongoing proposition 98 funds to support increased nursing enrollment slots and unmet equipment needs.

NURSING EDUCATION

17. What is the status of the distribution of Proposition 98 funds for increasing nursing enrollments slots? Have the colleges or the chancellor's office experienced any problems with the application for, and distribution of, these funds?

- To date the funds have been distributed to 39 projects throughout the state. Enrollment should increase by 1000 students because of this funding.
- I have heard of no problems between the colleges and chancellor's office for the distribution of these funds.

18. What, in your view, is the best strategy to reduce the attrition rate of students in nursing associate degree programs? What leadership should the Board of Governors provide in this area

- These students need to be better prepared prior to entry into these programs. Some of this preparation is related to basic skills as well as a grasp of the commitment that this program requires.
- Understanding the needs of these students and what changes the program requires are things that the Board of Governors needs to address. Items such as improving education into the basic skills, timely identification of academic problems along with remediation activities as these students progress through the program should be taken into consideration.

19. What can be done to recruit and retain more nursing faculty?

- Review the salaries of faculty and make sure that we are paying at an industry scale equal to what they could make in a hospital.
- Increase the number of programs that can award Bachelor's or Master's degrees in nursing.
- Market the benefits of a faculty position and look to retired personnel from the private sector willing to work in this environment.

RANDAL J. BRESSETTE

Responses

August 4, 2006

Senator Don Peralta
Chairman
Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Re: Senate Confirmation of Appointment to the California Veterans Board

Dear Senator Peralta:

Thank you for your letter of July 14, 2006, requesting replies to questions you have regarding my Senate confirmation to the California Veterans Board. I am grateful for the opportunity to address your questions.

I have provided my answers in a format that does so after restating your questions. For abbreviation purposes, CDVA is the California Department of Veterans Affairs; the Secretary is Secretary Tom Johnson; the Board is the California Veterans Board.

1. *What goals and objective do you hope to see accomplished during your tenure as a member of the California Veterans Board?*

    1. To administratively organize the Board as a body that efficiently and effectively performs its legal obligations and stated Vision and Mission Statements.
    2. To organize the leadership of the Board in a manner that will enhance our ability to accomplish our legal obligations and stated Vision and Mission Statements.
    3. To enhance the prestige, integrity, abilities and reputation of the Board.
    4. To update and revise, as appropriate, the Boards' Vision and Mission Statements.
    5. To update, revise and establish policies set by the Board for its' operation and that of the CDVA as required by the California Military and Veterans Code.
    6. To create a work plan that identifies short and long term goals of the Board and establishes work plans to attain those goals.
    7. To make the Board a viable caucus for veterans' affairs, allowing for a free-flow of ideas and information to and from veterans' groups, the public, members of the Armed Forces, the Secretary and CDVA, the Governor, and the Legislature allowing for the enhancement and protection of veterans' rights and benefits.
    8. To implement a program to reduce the number of homeless veterans in California.
    9. To continue oversight of the California Veterans Homes, existing and new.

10. To create a strong working relationship, within the law, between the Board and the CDVA that enhances veterans rights and benefits.
11. To establish a study that explores the needs of the new generation of military men and women who are currently serving in our military who will need different benefits than those available to veterans of previous wars and conflicts, and then to implement the findings of that study.

2. *What experience and expertise do you bring that will be of value to the California Veterans Board?*

If you count my twenty-three years of service as a Navy aircrewman, I have been serving my country and my community for thirty-three years. I have a Bachelor of Science Degree in Business Administration from the University of Redlands, and a Masters of Science in Financial Planning from Southern States University.

I am a founding member of the Laguna Hills City Council, having been elected to the Council concurrent with the vote for incorporation in March 1991. I have served as Mayor three times, in 1996, 2001 and 2005.

I serve on the city's Financial Audit Committee and Civic Center Management Committee, and I am the city's representative to the Orange County Public Library Board of Advisors. In 1996 I served as Chairman of the Laguna Hills Community Center Planning Committee, setting the groundwork for the construction of the highly popular and award-winning Laguna Hills Community Center and Sports Park.

I have served as a member of and Chair of the Orange County Local Agency Formation Commission and as a member of the Orange County Waste Management Commission. I have served as a member of the League of California Cities Revenue and Taxation Committee and the Orange County League Executive Steering Committee.

Professionally, I am a Certified Financial Planner, and have served my clients financial needs since 1977. I am licensed in securities, insurance and tax preparation.

My wife, Mav of thirty-three years, and I are active in our community, schools, church and scouting. Our son, Matt, is a student at UCLA.

3. *Do you view the role of the California Veterans Board to set policy for the Department of Veterans Affairs? Can you supply instances there the Veterans Board provided policy direction to the department?*

While Paragraph 72 of the California Military and Veterans Code clearly states that, "The California Veterans Board shall determine the policies for all operations of the department", it does not provide further direction to the Board. While it is necessary, under law, for the Board to set policy for the department, from a practical standpoint it seems to be a difficult task. My review of polices set by the Board before my appointment finds many of them poorly written, without merit and/or unnecessary. One of my goals is to thoroughly review existing policies for appropriateness and look forward to what new policies need to be written. It is my hope that the Secretary and the Board can work together in this endeavor. It should be noted that the Board only has one full time staff member and does not have independent legal council. During my six months on the Board, we have written four policies all of which were reactionary to issues brought before the Board or occurring within the CDVA that required our attention.

4. *Should the Veterans Board have independent legal counsel? If so, what steps have you taken or support taking to ensure the board has independent legal counsel? To what extent has the option of utilizing lawyers from the attorney general's office been discussed or employed?*

   The Veterans Board needs independent legal counsel. The Board has the obligation to set policy for the Department, and hear appeals from veterans about Departmental actions. We can only do so in an unbiased and learned manner if we have legal counsel that is independent of the Department. A committee of the Veterans Board met with the attorney general's office regarding this matter, and we are waiting for their response to that meeting before we can move forward. The alternative to using the attorney general's office would be an attorney who is willing to assist the Board on a low-cost or pro-bono basis for the good of our veterans.

5. *Critics state that a number of the Department's rules and regulations are outdated and that many of them do not reflect the Department's existing practices or services. Do you agree? Are there plans to undertake a review?*

   I completely agree with the criticism that the many of the Department's rules and regulations are outdated. They at minimum require review by the Board. In the short time I have been on the Board we addressed a very few of these, and I support the Board taking action to comprehensively review existing rules and regulations and work with the Department to develop new rules and regulations that we feel are necessary.

6. *What goals do you have for the new unit (Yountville Alzheimer's Dementia Unit)? Are there plans to establish more units like the one in Yountville?*

   I am hopeful that the Yountville Alzheimer's Dementia Unit will be the model for other units in the California Veterans Homes system. There are currently 60 beds planned for the Alzheimer's Dementia Unit in West Los Angeles. The need for this type of care will increase as time goes on. The Secretary is actively pursuing building additional Veterans Homes that include an Alzheimer's Dementia Unit.

7. *What role do you play in monitoring the status of federal matching funds and projected construction start dates on proposed new Veterans Homes?*

   The Board is continually monitoring progress of the federal matching funds and projected construction dates. The Secretary and the Department provide regular written updates, as well as oral reports by the Secretary and appropriate staff at our Board meetings. The Board and I provide comment and input as appropriate. I am very satisfied with the level of attention and detail that the Secretary and the Department are giving these very important projects.

8. *Does the Department seek the Board's advice on any changes in policies with respect to admittance/denial of veterans to a Veterans Home, definitions for the levels of care provide by the Department at the Homes, or other regulations that might impact the Board's authority over the appeals from veterans who were denied admission to a Veterans Home?*

   The Board and the Department are beginning to work together on these very important issues. This year the Board has written and passed two Policies directing specific action by the Department regarding the Veterans Homes. The Board wrote General Policy A-13 directing the Department to provide for continuing administrative support to Board members who reside in a Home. We wrote General Policy A-4.1 to prescribe policies and procedures to the Department regarding the production of records on appeals by a veteran. The Board is very interested in the welfare of and closely monitors our Veterans Homes. I am certain we will continue to issue direction as necessary and work closely with the Department to ensure that the quality of our Veterans Homes are improved.

9. *Are there any policies, programs or initiatives you believe the state should be implementing to help the younger generation of veterans created post 9-11?*

Yes. This class of veterans has different needs and character than veterans of past eras. There is a certain pride, certain humility, and a definite deep desire for success among these veterans. We must create and enhance educational opportunities for our returning veterans that includes tuition reimbursement or payment for certain occupations and professions; create job and educational opportunities for those veterans who do not want a formal classroom education but rather prefer to pursue a trade; provide enhanced opportunities for our disabled veterans who will live long and useful lives with disabilities caused by wounds that in the past would have been mortal injuries; provide appropriate counseling opportunities for veterans (able and disabled) and their families once the veteran has separated; provide care for our homeless veterans; continue our strong commitment to building new and maintaining our existing Veterans Homes; and show a sincere and lasting respect for their courage and commitment to our state and our country.

10. *In light of recent problems with the U.S. Department of Veterans Affairs with the theft/loss of personal data, has the Board examined the California Veterans Affairs Department's existing privacy policy?*

The Board has not formally reviewed the existing privacy policy. The Board has received written correspondence and a verbal report from the Secretary following the theft/loss assuring us that the Department's policies are such that this kind of theft/loss cannot occur. The Board continues to monitor this issue very closely.

Senator, my Form 700 has not changed since January 15, 2006. I am enclosing a copy of that statement for you reference.

Sir, As a 23-year veteran of the Navy Reserves I sense a strong moral obligation to make every effort possible to ensure that the needs of my fellow veterans are met. Many of my brothers and sisters in uniform desperately require the medical, financial and social benefits that have been pledged to each one of us. I will work diligently to ensure that promises made to the veterans by the State of California and the United States government are kept and that services and benefits are delivered as promised. There is a profound need to plan <u>today</u> for the future influx of the current members of our armed forces who will be completing their military service and returning to civilian society with highly-deserved expectations.

I can recall in the early 90' attending a dinner in Sacramento that a broad majority California Legislators attended. Our Senator at the time, Joe Gonsalves, made the introductions that night. Almost every legislator's introduction included the branch of service they were

veterans from. Today, my friend Senator Bill Morrow tells me he is the last member of the U.S. Marine Corp caucus left in the Senate.

The fact that so few veterans remain in our state legislature is troubling to me. I am appreciative to you that your questions are meaningful and provocative, and am very grateful for the support your have shown our veterans during your term in the legislature.

If you have any further questions, of if I can be of service to you in the future, please do not hesitate to call on me. Please feel free to contact me on my cell phone, 949-338-9304, or at my office, 714-435-9875.

Thank you.

Very respectfully,

Randal J. Bressette

ATTACHMENT

Cc: File

548-R

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STATE OF CALIFORNIA

STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 30, 2006
1:35 P.M.

549-R

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 30, 2006

1:35 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

DEBRA S. FARAR, ED.D., Member
Trustees of the California State University

LOUIS G. MONVILLE, III, Member
Trustees of the California State University

SENATOR ROBERT DUTTON

DAVID BALLA-HAWKINS
California Faculty Association

INDEX

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have a quorum.

We have two items today which we will endeavor to dispatch quickly. We had a little SNAFU, but we've corrected that. I apologize for the delay.

Would Debra and Louis come forward. We'll torture you briefly, then you can go have your husband buy your lunch.

The only thing you've got working against you, Mr. Monville, as you probably know.

SENATOR BATTIN: It's a cross he has to bear.

CHAIRMAN PERATA: So, would you like to open, Debra?

MS. FARAR: I'm first?

I'm Debra Farar, Trustee of the California State University system.

Good afternoon, Senator Perata and Members of the Rules Committee. I'm deeply honored to be considered today for confirmation to the Board of Trustees.

I would also like to thank the Committee Members for the opportunity to meet with you or your staff earlier this month.

I consider my service to the California State University Board of Trustees to be a privilege and the finest and most important work of my life. What I learned from being a past Board member is that I share this belief with most current and past Board members.

I have lived and worked in California all my life. I'm a product of California public education, and my life work has been in public education.

I bring to this Board the perspective and empathy of someone who was a first generation college student, with limited resources, who was able to take advantage of the great opportunity called the California State University. My hope is that all students in California will always have the opportunity that I had.

The CSU has done, and I believe will continue to do, an outstanding job of providing access to all qualified students in California, regardless of their life situation. However, there are some challenges for the CSU ahead, and I believe that most of these challenges center around access.

In my statement, I discuss this and other issues in depth, and in the interest of time, I will not reiterate the issues but will be happy to answer any questions surrounding that.

The Board of Trustees has an awesome responsibility to ensure that this great University remains accessible and affordable, but I feel that we are up to the task because of the quality of the Board and the leadership of the California State University.

I would very much like to continue to be a part of the solution to these challenges. I hope that you will see fit to confirm me so that I can have the opportunity to give back to the state that has been so very good to me.

Thank you very much.

CHAIRMAN PERATA: Thank you.

Senator Dutton, are you here for any particular reason?

SENATOR DUTTON: I thought I'd kind of see what you guys did. I'm kidding.

CHAIRMAN PERATA: You're welcome to stay.

SENATOR DUTTON: I'm here because I know --

CHAIRMAN PERATA: Sit down. I kind of figured that might be why you're here. This will offset the support from Senator Battin.

[Laughter.]

SENATOR DUTTON: Basically, Lou indicated he was concerned about that.

So, I came here to let you know that I've known Lou for a long time. He's a very active member down in my district, the Inland Empire. He's been a very conscientious member of the community, former Chairman of the Greater Riverside Chamber of Commerce. Very active, very supportive of everything that's going on.

I think he's an excellent member of the Board, and am proud to recommend him for the position.

CHAIRMAN PERATA: I'm sure that'll help.

SENATOR DUTTON: With that, why don't I go back.

CHAIRMAN PERATA: I don't blame you, go ahead.

Try to live up to that.

MR. MONVILLE: Thank you, Mr. Chairman. Good afternoon, Members of the Committee.

I'm very pleased to be with you today as a

nominee for the California State University Board of Trustees, and pleased to be here with Member Farar.

This is an exciting time to be a part of the California State University system, and I'm very fortunate to have been given this opportunity to serve, and I'm certainly cognizant of that.

I'd like to thank Senator Battin for his friendship as well as Senator Dutton. It's very kind of both of them to say nice things on my behalf, and I'm very grateful for their support.

I'm also very fortunate to have a family who's very supportive of my service. Unfortunately, today I'm here alone because my wife, Kelly, is a brand-new elementary school principal in the Etiwanda Unified School District. School started Monday, and she's taking over the new reins. But she's been very supportive. And while she's not here today in the flesh, she's here in spirit, and I'm very appreciative of her support.

A little over a year ago I sat before this Committee during the process of being confirmed to the California Community College Board of Governors. I very much appreciated your support and the discussions we had during that confirmation, and I appreciate the opportunity you allowed me in serving there.

My tenure on that board was rewarding, and I gained a unique perspective on the importance our California community colleges play in the Master Plan for Higher Education here in California. I hope to bring my experience from the

Community College Board of Governors to my service on the CSU Board of Trustees.

Many of the issues we worked on at the community colleges -- like transfer, student fees and financial aid, and remedial education -- are also challenges and opportunities for the CSU. And I look forward to the prospect of continuing to work on those issues on behalf of California students.

As I mentioned earlier, I believe this is an exciting time to serve the California State University. As a graduate of CSU San Bernardino, I know first-hand the powerful impact a CSU education can have. It fundamentally changed my life, and I have seen how the CSU education is changing Californians' lives for the better every day.

I am proud to be a product of this system, and I look forward to having the chance to work with you and your colleagues in the Legislature to assist in helping 405,000 California State University students find success in their chosen paths.

I've responded to the questions I was given by your Committee in advance, and I appreciate the opportunity to have answered those questions.

I know the Legislative Session here closes in several hours, and you have very full schedules, so I'm thankful of the opportunity you've given me today.

I'd be happy to answer any of your questions, and I appreciate your consideration of my confirmation.

CHAIRMAN PERATA: Thank you.

I want you to know that the lobbyist, or

advocate, excuse me, for the UC system is here, scouting, should you do well.

MS. FARAR: Not interested.

CHAIRMAN PERATA: Not interested. You're down one already.

Questions from the dais?

SENATOR BATTIN: I don't have a question. I just have a comment.

I told Mr. Monville that I'd introduce him, and it just kind of started up without that.

I've known Lou for a long, long time. And Mr. Chairman, I appreciate --

CHAIRMAN PERATA: He's only 34.

SENATOR BATTIN: I know. He's one of those like Bogh. He looks seventeen.

I've known Lou for a long time.

Mr. Chairman, I appreciate the fact that you and your staff allowed Mr. Monville to come up for confirmation early. I know that's not normal, and I appreciate that.

We did confirm him for the community colleges, so we have seen him before.

I just think, knowing Lou, I think he's going to do a great job. He's one of those guys in the Inland Empire that is just a go-to guy. He's always doing something, and he's doing it right. He's always doing a leadership position, strong advocate, and gets things done.

That's what we want on the position. We want somebody there who is an advocate, wants to get it done -- and

Mr. Bogh just walked in.

CHAIRMAN PERATA: He heard his name.

SENATOR BATTIN: But I would gladly move both nominations for vote.

CHAIRMAN PERATA: It's okay, Russ, with you?

ASSEMBLY MEMBER BOGH: Certainly, Mr. Leader.

CHAIRMAN PERATA: Anybody here in support of the two nominees?

Anybody here in opposition?

We have a motion to approve both.

SENATOR BOWEN: I think, you know, it's important to sort of follow up what's happened here with the history. And I know there have been a lot of conversations.

But I think one of the things that we want to do in the Rules Committee is make sure that we're asking the Trustees questions that they can respond to, not by having to go consult with somebody about what happened before they were ever appointed, but that really reflect their own commitments and points of view.

So, I think we're all going to have that conversation after the session ends. I think there's an awareness of it that should be agency-wide that's different as a result of what's occurred.

The biggest challenge, I think, to CSU really is going to come with the issue of the compensation, which has been much in the headlines. And it's not a question that was much asked about, and I would like to have both nominees talk a little bit about their feelings about what should happen next,

and particularly about what the responsibility of the Trustees should be.

And I'm flagging this particular issue because of an article in The Chronicle in which at least one Trustee commented that he was unaware that paid transitional leaves and consulting assignments were being awarded.

So, the question really is, what should the Trustees responsibility be vis-a-vis the finances of the University, knowing that you're not there as the Chief Financial Officers. You're there in an oversight role.

And then, what changes do you believe need to be made at a policy level?

I understand that the compensation awards that have been made are in accordance with the policy, but then, of course, that leads to the question of whether policies that are in place now are, in each of your views, appropriate?

You can throw dice, or flip a coin, to see who goes first. Maybe we should have brought you up separately so we don't have any question about who's answering.

MS. FARAR: Well, I'd be happy to address that, Senator.

All decisions made by the Board, as I indicated, they're conforming to policies that were made between 1981 and 1997.

And by virtue of our position, we are -- we are required to carry forward the policies often that are put in place before we were even Board members, for myself and definitely before Lou.

1 However, that said, we constantly revisit these
2 policies. We feel we understand what the newspaper article
3 said, but we were informed about, the majority of the Board, it
4 is on our web page. We did know about the executive policies.
5 That said, we are addressing this at our
6 September Board meeting. We're constantly reviewing this. We
7 take our commitment to the public trust, we uphold it very
8 seriously, and our duties very seriously.
9 And we are, perhaps, haven't been as sensitive to
10 how we can better communicate this to the public about the
11 openness. Because all of this did happen at open Board
12 meetings. The way the policy is set up, as you understand is,
13 these were -- they're part of their original compensation
14 package. That came up later on.
15 You know, we have been very proactive. There is
16 something on the web page now that answers all of the questions.
17 And as I said, it is coming to our September
18 meeting, and we're very much ready, willing, and able to address
19 these policies and how to better communicate them to the public.
20 SENATOR BOWEN: Do you think it's just
21 communication, or is there something in the policies
22 themselves?
23 You have a difficult balancing act, because you
24 are looking to recruit the best possible talent, and so, we're
25 looking at basically best value hiring practices. We don't want
26 you to just go find whoever is going to do the job for the least
27 amount of money. We want you to find the person who's going to
28 bring the best value to the system.

But the flip side of that, of course, is that every nickel that gets spent on one thing doesn't get spent doing something else. So, you have a challenge.

Do the policies that are currently in place, in your view, allow you to make that determination in a way that meets your satisfaction, or is there something that you, as a Trustee, information or background that you would like to get that you don't currently get?

MS. FARAR: Specifically, I am very anxious to review the policies. As I said, these policies were put in place before my tenure on the Board.

However, that's a very real issue you brought up, Senator. We are not competitive by our comparison institutes. Our salaries are 40 percent lower for our presidents, as they are lower for our faculty, too, as well.

We have a five-year plan in place to try to raise everyone's salary. We are losing great faculty because of this, and we have lost presidents because of this, and it's almost impossible to recruit the type of candidates we want when this is what we offer. You know, we're so far below the marketplace.

We are trying to address that. But as I said, I'm very anxious to review the policy, as I think all the Board is, and to perhaps do what's best.

As it stands now, the executives that were part of this program that was talked about, there is only five of them. One of the transition programs ended in August, and there's only five of them undergoing in a modified version of this, which had already saved the state some money.

1 So, we want to be very frugal with our -- and
2 very much we take seriously our fiduciary responsibility. So, I
3 welcome the opportunity to review this.
4 MR. MONVILLE: And I'd be happy to thank you,
5 Senator, for the question.
6 You know, I had the unique opportunity of going
7 to my very first Board of Trustees meeting the day that the
8 Chronicle article appeared. So, I got to walk -- I got to walk
9 right into the fray, so to speak.
10 And obviously, coming into it with a fresh
11 perspective, having not had the history, I'm very much looking
12 forward to the opportunity to review it.
13 As a private business person, we are constantly
14 in the process of reviewing our hiring and compensation
15 practices to make sure that we are competitive, and we're
16 treating people fairly.
17 So, I'm looking forward to September, having the
18 opportunity to really get a full understanding of what our
19 policies have been, and where they are appropriate and where
20 they're not, and then coming back in November and taking any
21 action necessary to correct any areas where we may have
22 weakness, or places where we can make improvement.
23 I will tell you, having been reading the
24 materials on the issue, I am concerned, as Trustee Farar is, and
25 applaud the Board for what they've done to date, particularly in
26 the issue of salary lag.
27 Competitiveness, in order to deliver the promise
28 of the education that we're committed to deliver, we need to

1 continue to be competitive. And it affects us across the board.
2 It affects us at our executive ranks. It affects us with our
3 faculty, our ability to be competitive with faculty, our ability
4 to increase faculty diversity.
5 So, I think setting appropriate milestones in
6 order to meet those goals in a five-year plan, I think, is
7 reasonable. I think the Board is moving in the right direction.
8 I'm looking forward to exploring the issue on the
9 executive side further, and getting educated.
10 But I will tell you, I think a periodic review of
11 that in public open session, that allows discourse and
12 interested parties to participate in the process, is important,
13 and I would welcome that.
14 SENATOR BOWEN: Actually, I think that's a great
15 idea. Rather than just have whatever the policies are from 20
16 years ago, that suddenly bite you when you weren't expecting it,
17 to have an ongoing review, particularly in an institution that
18 is going to change as you move from having them primarily funded
19 by taxpayer money, to being much less dependent.
20 And I'm not saying that as something that I
21 favor. I'd rather see our higher ed. system continue to be
22 better, more taxpayer-funded, but that's not the direction we're
23 going.
24 I think this question, I really want to highlight
25 this because I think what happens is, and I haven't read the
26 Chronicle articles, but I get e-mails, as many of us do, from
27 people who, who say, "Why are my kids paying X in tuition, and I
28 just read that somebody's getting a million dollars for not

1 doing anything after they've retired?"
2 And it's hard for us, in an institution whose
3 members have no retirement benefit at all, to answer in any kind
4 of way that's serious.
5 So, I would welcome your review of that issue
6 particularly.
7 I'm very comfortable with both your answers on
8 the questions.
9 SENATOR CEDILLO: Similar question, but just
10 adding in the component of salaries as they relate to fee
11 increases.
12 How do you reconcile that? How do you address
13 that?
14 Regardless of the tremendous need to recruit
15 quality, talent, both at the administrative level and at the
16 faculty level so that the University can accomplish its mission,
17 nonetheless, the perception is not good. And particularly
18 amongst, as the Senator said, students, parents of students who
19 say, "Here's these big salaries, and fees are up, tuition is up.
20 Programs are being cut."
21 MS. FARAR: As I said, you know, we are very
22 troubled by that as well.
23 And that is why we're going to review the
24 policies at the September Board meeting in a public open session
25 to better communicate this to the public, that by no means are
26 we looking to give executives perks or advances, but to better
27 communicate this, that it was all done in open public session,
28 and that it is part of the executive compensation. It's always

1 part of the public meetings as well. To reiterate, that we take
2 this very responsibly.
3 We, you know, Lou and I are both alum from the
4 system, it means so much to us. And as I said, my hope is, I'll
5 always want all students an access. And affordability and
6 accountability is our mission, and we want to stay with that.
7 MR. MONVILLE: I appreciate the question,
8 Senator.
9 One of the advantages I have being 34, since
10 everyone wants to point it out, is I remember what it's like to
11 be a student. It's still close enough to my time that I still
12 remember fondly those times.
13 And I remember decisions you had to make of, do I
14 eat this week or do I buy this text book?
15 So, I am sensitive to balancing, you know,
16 competing priorities. I think we struggled with that a lot in
17 the community colleges.
18 And I think one of the solutions to balancing
19 this issue of student fees versus how to address compensation
20 is, A, I think the Board has taken a good step in taking a
21 long-term approach to compensation, recognizing you can't flip a
22 switch and catch up overnight.
23 But two, I think in my mind where we need to
24 focus is in the area of financial aid. If we are in a position
25 where a student fee becomes -- an increase becomes necessary,
26 what are we doing to offset that fee for those that are most
27 vulnerable? What are we doing to increase Cal Grant access?
28 What are we doing with the feds to increase the access and

dollar amounts in programs, for example?

Those are the areas where I think we can focus. We can work with the Legislature to seek, you know, additional General Fund support for financial aid.

And I think if we continue to balance those priorities and work together, I think we can address that.

SENATOR CEDILLO: I appreciate that.

My question was really more specific, meant for a broader response: to address your strategies, your fiscal strategies for improving the University.

Thank you.

CHAIRMAN PERATA: Anything further?

Well, I'm delighted that you're both doing what you're doing. And you've been doing it, Debra, through two administrations, and that must underscore your commitment, or maybe you needed to be committed.

Did you want to speak?

MR. BALLA-HAWKINS: Mr. Perata, Senators, David Balla-Hawkins. I'm with the California Faculty Association. We represent the faculty, counselors, librarians -- 23,000 members within the CSU.

We are not formally opposed to either Trustee Farar or to the candidate, Mr. Monville. But we do have serious concerns about the direction the Trustees have taken in the past few years. Really, this is one of the few opportunities that we have to address it.

In response to some of the issues that were brought up by Senator Bowen and Senator Cedillo, we really have

1 difficulties with the priorities that we've seen come out of
2 this body.
3 For those of you who have not read the Chronicle
4 article, one of the issues that stood out most for us, there
5 were two examples of executives who had retired from the system,
6 were receiving a full-time salary, and yet were still receiving
7 a salary from the CSU.
8 David Spence, who is the former Executive Vice
9 Chancellor, was hired by the Southern Regional Education Board,
10 receiving $225,000 a year. During that same period, he
11 continued to receive a salary from the CSU of $174,000, 70
12 percent of his salary. And we're not aware of any work he did
13 to receive that money.
14 Secondly, we have Peter Smith. Peter Smith was
15 the ten-year President of Cal State Monterey. He was hired by
16 the United Nations Educational Scientific and Cultural
17 Organization, continued to receive a salary from the CSU of
18 $158,000 thousand. Again, we're not aware of any work that was
19 performed in -- for receipt of that money.
20 If that is a standing CSU policy, then that's
21 something we have very serious concerns about.
22 Secondly, Mr. Cedillo brought up the issue of
23 compensation as well. Recently, the Board of Trustees, in a
24 public session -- we're not sure about the other two examples I
25 gave you, but we do know the other session was in public --
26 awarded salary increases to senior management at the
27 Chancellor's Office as well as each of the campus presidents.
28 Those salary increases averaged 19 percent: A 14

1 percent in salary, a 33 percent increase in car allowances, and
2 then 89 percent increase in housing allowance. The average
3 salary increase of $45,000 a year exceeds the salary of an
4 assistant professor at the CSU.
5 There's been discussions about closing the salary
6 gap. We've seen efforts to close the salary gap for
7 administration. We have not seen similar efforts -- we have not
8 seen similar for faculty and staff.
9 Thirdly, as many of you are well aware, we had
10 the Compact Agreement that was signed with the Governor roughly
11 three years ago now, three or four years ago, an agreement that
12 was very highly criticized by the Legislature, and that faculty
13 criticized as well.
14 The reason being is that we feel that the Compact
15 locks us into bad budgets. Under the Compact, even if it's
16 fully funded, we do not reach funding levels that we had in
17 2002-2003 until 2007-2008.
18 In the meantime, we have higher numbers of
19 students that we need to serve, and we have exceeding student
20 fee increases that are pricing the middle-class as well as lower
21 class out of the opportunity of attending a CSU campus.
22 In our minds, the priorities need to shift on the
23 CSU Board of Trustees. Up until this point, they have not asked
24 for any money beyond the Compact in each of their budget
25 requests, and we feel that that's irresponsible.
26 At the same time that they haven't asked for
27 additional funding, they're admitting that they have over a
28 billion dollars in unmet need.

So, understand, our students and faculty, we're on campus, and we're hearing about unmet need. We're hearing about student services not being offered. We're hearing about classes being eliminated. We're hearing about access being compromised.

And at the same time, there are salary increases that exceed anything that we've seen in a number of years, as well as reports about compensation given to former executives that are no longer required to do any work for the CSU system.

We believe that we need a governing board that truly advocates for the CSU and is willing to question the administrative solutions that are proposed to this Board. Without adequate leadership, our students will continue to suffer, and the educational opportunity for thousands of students will continue to be compromised.

We hope that today's hearing will encourage our Trustees to carry out their responsibilities and obligations, and to advocate for a quality University system that is truly accessible and truly affordable to the low-income and working class families.

Thank you, sir.

CHAIRMAN PERATA: Thank you.

Well stated, and I think it's something that all of us concur.

I just want to add that you got a light brush with one of the local papers about administrative high visibility, inexplicable issues, or indefensible issues.

But I want to point out that the way you stop

that is to have a pretty good idea of what the administration's doing. I would just encourage you to have a disproportionate amount of your time trained with asking questions.

I believe that the CSU is in the hands of a very competent administrator right now, but there always needs to be scrutiny. You have to scrub this stuff.

And at a time when we're struggling to keep the caliber of the education system in this state that we once had, and sometimes delude ourselves to believe that we still do, we have to make sure that we don't make stupid mistakes. And stupid mistakes are those who don't think that putting somebody on the beach for a year, at a salary, for whatever reasons.

And my view is, if somebody wants to do that, they ought to just go in a closed session and tell you, "Here's what I'm going to do. Here's why I'm going to do it. I've got pictures with me with a sheep," or something. Whatever it is.

But, you know, if they can't be honest with you, I just thought it would relate to something from where you're from.

By the way, Assemblywoman Garcia has come. This is the first time we've had a flotilla of elected officials come in to protect you. I'm not going to say it's because of your age. I'm sure it's other things.

SENATOR BOWEN It's because of his youth.

MS. FARAR: Senator, as I indicated when I understood Lou was accompanying me, or I'm accompanying Lou, I didn't want to be mistaken for his mother.

[Laughter.]

CHAIRMAN PERATA: Far be it for anybody here.

MS. FARAR: Thank you.

CHAIRMAN PERATA: So, I just would encourage that, because there was a piece of legislation here that was going to remedy this problem by taking all executive matters and have them conducted out in public, which I thought was a singularly bad idea. If there's any way to drive people of reputation and substance away from a university or a state college, it's to: Let's have talk about me in front of the village idiot.

You're really there, your job, is to be -- and I don't mean this to be a lecture -- but the job really is to be the liaison between the administration and the public. And among all these other issues that are really important, how the place is run.

I think all of us can respect the need to pay a just compensation for the kind of caliber teaching staff that we need. If you don't have that, you don't have the University system.

By the same token, there are those that would, you know, like to tear it down.

And so, I think while you don't necessarily go out and golf with the administration, it is very important to develop the kind of relationship that they feel like they can be honest with you. And I'm sure you would do this, but at the first sign that they're not, that they are running a side game, I would hope you take action to either embarrass them mightily or dismiss them if you can. I think it's the only way you can

be.

We've seen this with all administrations.

And I think the politics of this place are pretty intense and bizarre, but University politics, I'm telling you. They ought to give out uniforms and hats.

SENATOR BATTIN: Bigger desks.

CHAIRMAN PERATA: Yes, bigger desks, and more credentials.

Anyway, I thank you both. I think you bring a lot to the proceedings.

And let me just close by saying, I hope that you'll keep in contact with us from time to time if you see things that are going on, or do it over the transom, or under the door, or out in public, which we're very uncomfortable with, that would be fine.

With that, please call the roll.

Oh, I'm sorry.

SENATOR BATTIN: That's all right.

I just wanted to say, everything that the Members here said is true. What's happened with UC and CSU is that some stupid decisions have overshadowed all the good work that gets done.

And then the Legislature, because we are representatives of the people, we react. And then that pulls you off to responding to our reaction.

And then we're all talking about pay, instead of making sure that we have the resources that we need to have the Universities grow and their staff paid.

I don't want to see that. As a proud new parent of a student at CSU -- I'm an old parent of a new student at CSU.

[Laughter.]

SENATOR BATTIN: I want to see it succeed.

So, thank you.

CHAIRMAN PERATA: I brought you two up together, but I want to divide the question.

First we'll take the nomination of Ms. Farar.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: No.

SECRETARY WEBB: Ashburn No. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to one.

CHAIRMAN PERATA: Four to one.

SECRETARY WEBB: Monville. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Congratulations to both of you.

MS. FARAR: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:07 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August, 2006.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

The California State University

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August 7, 2006

The Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 305
Sacramento, California 95814

Dear Senator Perata:

Thank you for your consideration of my confirmation to a second term to the California State University (CSU) Board of Trustees later this month. As a graduate of this great system, I am honored to serve as a member of the governing board and look forward to the opportunity to continue my service to our students and the State. Below please find my response to your July 17th letter dealing with several issues of importance to the legislature and Trustees alike. I look forward to discussing these and other issues with you and members of the Senate Rules Committee in the next few weeks, and with your positive action on my confirmation, years to come as we work together to make sure that the promise of the Master Plan for Higher Education is a reality for students today and tomorrow.

Statement of Goals

1. *Please provide a brief statement of goals that you hope to accomplish while serving as a member of the CSU Board of Trustees. As a reappointed member, what lessons will you apply from your first term?*

   RESPONSE: I consider my service on the California State University Board of Trustees to be a privilege and the finest and most important work of my life. During my tenure on the Board, I realized that I share this belief with most current and past Board members.

   I have lived and worked in California all of my life. I am a product of California public education and my life work has been in public education. I bring to the CSU Board of Trustees the perspective and empathy of someone who was a first generation college student with limited resources who was able to take advantage of the great opportunity called the California State University.

One of my goals is that all students in California will always have the opportunity that I had and that this great university remains accessible, affordable and accountable to all California students.

To the three "a" words above, I would like to add a fourth "a" word, "adaptable". There is the expectation that the CSU meet the ever changing needs of the people of California and my goal is to remain responsive to the people.

Finally, my goal as a Trustee is to continue to be very informed about and very responsive to the challenges and issues facing the CSU. I have attempted to address some of these challenges and issues in my responses below which will continue to evolve. I have been and hope to continue to be very active as a Trustee. I have never missed a board meeting and I try not to refuse any request related to Trustee business. If the mission of the CSU is to be accessible, it seems natural that as a Trustee of this institution I should also be accessible and connect with students and campuses.

As a reappointed member, a lesson I will apply from my first term is that no one board member has individual authority and that the Trustees' authority is as a board. This is vital for all Trustees to understand. There can be no personal agendas and no individual board member is more powerful or important than others, even the chair of the Board.

During my tenure as chair of the CSU Board of Trustees, I formed a committee composed of faculty, trustees, administrators, staff and students to address the importance of Shared Governance in the CSU. During this time, I learned the value of constant communication with all constituents of the CSU and that communication always involves listening as much as it does speaking.

Finally, during my first term I have come to appreciate the awesome responsibility all of us share at the CSU. The CSU is the largest, fastest growing, and most diverse university system in the country. We are truly the "economic engine" for California and given that California is the largest state in the nation, we are an economic powerhouse for the country. Just about any major move that we make is watched very closely not just in California but by university leaders and policymakers all around the country. All of us need to remember that we have an important leadership role not just here in California but in serving as a model for the entire country. I am very proud to have served and hope to continue to serve as a member of the CSU Board of Trustees.

CSU's Improved Revenue Picture

The 2006-07 Budget Act provides a General Fund increase of 7.4 percent above the 2005-06 level and funds the higher education compact. In accordance with the compact, the budget funds a 2.5 percent increase in funding for enrollment growth, a 3 percent general increase to basic budget support and buy-out scheduled fee increases.

2. *What do you believe are the most critical issues CSU should address given the increased funding the system has received for the upcoming fiscal year?*

RESPONSE: The CSU 2006-07 Budget Plan approved by the Board of Trustees in October 2005 established the most critical needs at CSU with the expectation of revenue from the state and under the higher education compact agreement with the Administration.

The first demand for any new dollars is contractual and on-going mandatory costs typically associated with increases in employee health benefit premiums governed by the rate structure authorized by State Government Code (Section 22825.1), the permanent, full-year cost of collective bargaining agreements, and the opening of new classroom and educational facility space. Recently, CSU also had to commit new resources to help campuses fund the rising cost of energy utilities (principally natural gas and electricity). Roughly 15 percent of all new revenue we received in 2006-07 was used to fund our mandatory cost obligations.

Another 33 percent of new revenue CSU received for 2006-07 was automatically designated to increase student enrollment at CSU by 2.5 percent, expand nursing program enrollments by 443 FTES in 2006-07, and increase the pool of funds available for student financial aid grants. Although CSU presidents have budget flexibility in the use of funds to address the most critical instructional needs at the campus and support student access, they are accountable for insuring these funds are used for quality academic instruction, achieving funded enrollment levels and that financially needy students receive grant aid to cover the statewide mandatory fees.

CSU asked for and received additional state funding support for math-science and nursing initiatives, as well as the permanent restoration of funds reduced from the proposed budget for student academic preparation (outreach). These specific requests comprise another 5 percent of the new revenue the university received in 2006-07.

Of the remaining 47 percent of new funds that are discretionary and available to address critical budget year needs, the Board of Trustees and I believed the number one priority was stabilizing the market competitiveness of CSU employee salaries and addressing critical salary lags for specific employee groups. Our review of CSU employee salaries at all levels revealed that critical lags equal nearly 145 percent of total current salaries paid. The lags covered nearly all employee groups: physicians, faculty, public safety officers, professional support staff, administrative staff, skilled craftsmen and executives. The Board approved a three percent base compensation increase for all employees and endorsed a five-year plan to address salary lags (42 percent of the new revenue CSU received in 2006-07). The first year cost of the plan is $16.5 million. The total cost of our five-year plan is approximately $325 million. Of this total cost, $222 million or roughly 70 percent would be used to address the faculty salary lag.

This action was deemed critical to stop the loss of highly skilled, professionally trained staff who could find better salaries in similar fields in the national job market that our campuses compete in to get the best and brightest for our students.

Finally, the Board authorized the use of the remaining 5 percent of new revenue to address structural deficiencies in technology upgrades and innovations to deliver and support instructional programs, library core collections, and addressing deferred maintenance backlogs. Over $100 million in long-term deficiencies (critical needs that can only be funded over a multi-year period) remain at CSU. Until the state begins to address these needs in final budgets for the CSU, we believe that we must make these minimal allocations for these purposes to at least halt continued growth in these deficiencies.

3. *What can the CSU Board of Trustees do to take advantage of the improved revenue picture for the system and plan for the future, particularly in anticipation of less economically favorable times?*

RESPONSE: The Board of Trustees is obligated to look not only at the current revenue picture for the university, but also previous budgetary actions that affect the ability of the university to achieve its Master Plan mission as well as implement long-range plans designed to sustain the quality of the university. In other words, it is the Board's obligation to take a comprehensive look at all issues affecting the financial stability and educational quality of the university, within the resources provided by the state and in turn develop a budget framework compatible with our strategic plan for the university.

Specifically, the Board's principal responsibility should be to make certain the strategic academic and business recommendations of the Chancellor and our executive management adapt easily to the availability of resources provided by the state and respond quickly to unforeseen or anticipated shortfalls. By this I mean the Board should ensure CSU has plans in place that identify a strategic academic growth plan that can respond as quickly as possible in how to best use available resources and align expenditures with any adjustments in revenue without jeopardizing the goals established in the Master Plan.

I believe that part of my job as a member of the Board of Trustees is to work actively with my colleagues, the Chancellor, campus presidents and others that are part of the CSU community to ensure the university receives a fair share of new resources; resources that are critical to improving student access, academic quality and the vibrancy of the university's workforce. All of the Board members take this responsibility seriously and hope to work with all of you to ensure that the CSU is properly and adequately funded, including restoration of the over $550 million cuts imposed the system suffered in annual budgets between 2002 and 2005.

Similarly, the Board must be prepared to make hard but crucial decisions that preserve the quality of the university when economic conditions worsen or budgets are insufficient to meet our total costs and needs. The principal priority in aligning expenditures with available resources should be the preservation of the quality of academic instruction.

Finally, the Board must make sure that we have a sustainable student fee policy that recognizes student fees as a necessary and critical ingredient for achieving the university's Master Plan mission. The Board must provide for reasonably, predictable and affordable student fee rates that support the overall educational program and that are linked to a comprehensive financial aid policy that ensures students with the most need will continue to have their fee obligations met.

College Affordability

The 2006-07 Budget Act buys out the scheduled CSU fee increases to maintain fees at the 2005-06 level. Annual undergraduate fees will remain at $2,520; teacher preparation student fees at $2,922; and graduate students will remain at $3,102.

Currently the state has no student fee policy for its institutions of higher education, and typically sets fees based on the fiscal condition of the state. During bad economic times fees are increased. During good economic times fees remain unchanged or are decreased. The state has several financial aid programs designed to maintain access to college by offsetting the cost of fees. State financial aid offers little in the way of offsetting the cost of other living expenses.

4. *What do you believe should be the key features of a student fee policy for CSU students?*

   RESPONSE: The Board of Trustees adopted a student fee policy in 1993 that recognizes the state has the preponderance of responsibility for funding the cost of instruction while also acknowledging students and their families have a responsibility to cover a fair share of total educational costs associated with obtaining their college objectives. The Board policy calls for moderate and predictable fee increases that are linked to an index that identifies students' ability to pay. It calls for the provision of financial aid grants to cover the cost of fees for students with the greatest need. It analyzes CSU fee rates with comparison public institutions recognized by the California Postsecondary Education Commission. The Board policy recognizes that there should be differential fees to recognize the higher cost of graduate instruction and the potential for higher salaries associated with graduate degrees.

   With the authorization received from the state to manage its student fee revenue via this year's budget and related trailer bill, the state should complement this authority with affirmation that the governing boards of the public universities are in the best position to determine student fee rates. Just as the private institutions

in California are able to set fees in accordance with revenue they receive from the state in the form of Cal Grants and other student fee incentives, the Board of Trustees is similarly capable of analyzing state General Fund support projections and the availability of state and federal financial aid to set appropriate fee rates for its students. Consequently, I do not believe there is a need for a comprehensive State student fee policy that goes beyond a declaration that fees should be moderate and predictable, based on students' ability to pay, and that the governing boards have the primary responsibility for setting student fees within the context of state resources, the need to invest in and support quality and access, an appropriate student share of cost, and fees at our national comparable institutions when adopting fee rate increases.

5. *What financial aid policies should the CSU Board of Trustees pursue to ensure that all financially needy CSU students receive some form of financial assistance? What can be done to provide more financial aid that covers the overall cost of attending college and not just narrowly addressing the cost of fees?*

RESPONSE: The Board has promoted and will continue to promote expansion of the state's Cal Grant programs to address the needs of California students enrolled at the CSU and other California institutions. This year the CSU, working with our California State Student Association, sponsored AB 2813 (De La Torre) in an effort to address some of the most obvious inequities in the current Cal Grant program to address affordability for students. Three components were proposed including (1) fees/tuition for first year Cal Grant B students, (2) doubling the number of competitive awards, and (3) modifying the age restriction for access to Cal Grants from age 24 up to 27 to better reflect the age of students throughout our college and university systems. We sponsored this bill with the belief that the state needs to be investing more in student financial aid programs.

The Board has adopted, and will continue to support, a federal agenda that includes, as a priority, increasing the availability of student financial aid at the federal level. The purchasing power of the Federal Pell Grant, which is supposed to serve as the foundation for all financial aid for undergraduates, has failed to keep pace with inflation and rising costs of postsecondary education. In addition to advocating for higher Pell Grant maximum award and overall funding increases, the CSU has also advocated for altering the current allocation formula for federal campus-based student financial aid funds to assure allocation of those funds on a fair-share basis to institutions with growing populations of needy students and to newer campuses that are most disadvantaged by the current formula.

To provide more student financial aid, particularly with the objective of recognizing the overall cost of attending college, the state must renew its commitment to provide General Fund support for financial aid programs. Since 1992, CSU has assumed over $230 million in financial aid costs previously provided by the state. This support has been achieved by dedicating as much as

33 percent of all new student fee revenue to financial aid. Increasing student aid support above this percentage would cause significant harm to the university's ability to address critical academic needs. As I indicated earlier, only half of new revenue received by the university is typically available to address discretionary, priority need each year.

The state's broad higher education policy decisions, already in place and reflected in the structure and financing of its public postsecondary institutions and financial aid programs, is designed to address several aspects of affordability. For example,

- The community colleges serve as a gateway to four-year public institutions by providing a low-cost, local-based pathway for general higher education core instruction that can be transferred towards degree requirements of baccalaureate instruction. Affordability concerns related to housing, transportation, and tuition are particularly mitigated through community colleges if access and costs are a specific concern for students or their families.
- CSU and UC have 60/40 transfer goals for incoming students that guarantee community college transfers access. There are 23 CSU campuses in major population areas that offer access to home-bound CSU students.
- CSU and UC each offer institutional financial aid based on expected family contributions that mitigate the cost of attendance for students with need. Eligible students also have access to the state's Cal Grants to offset tuition and systemwide fees. Students with the most need generally receive a dollar for dollar offset of systemwide fee charges.

6. *What policies have the CSU Board of Trustees adopted to guide distribution of CSU institutional financial aid in a way that most effectively complements state and federal need-based financial aid programs?*

RESPONSE: Shortly after the enactment of SB 1644 in 2000, the CSU modified systemwide policies with respect to the State University Grant (SUG) program to complement and enhance the commitment to low-income students made by the California Legislature in the expansion of the Cal Grant program. The changes were also made to provide needed flexibility to each campus to define financial aid strategies that best address the needs of its student population in relation to enrollment management goals. The basic policy priority of the program has remained the same since the origination of the program: ensuring that, as a first priority, SUGs are awarded to the neediest students, as represented by their Expected Family Contributions, to cover the full amount of the assessed State University Fee. While campuses may award SUGs to students whose Expected Family Contributions do not exceed fifty percent of the standard cost of attendance for students living off campus (an average of approximately $8,450

for 2006-07), the first priority for all campuses must be to ensure that students with Expected Family Contributions of $800 or less, who apply for aid on a timely basis, and who do not have their fees paid through another award, receive a SUG to cover the amount of the assessed State University Fee.

To effectively complement the state's Cal Grant programs and provisions for the waiver of mandatory fees, the maximum amount that a student can receive from the SUG program takes into account the value of fee waivers and the value of Cal Grant awards designated for coverage of fees. As a further means of complementing state and federal student aid programs, student eligibility for CSU institutional aid programs parallels basic eligibility standards used for federal and state programs with respect to the need analysis methodology, enrollment in eligible programs, restrictions against being in default on student loans or owing repayments of previously received grants, and requirements to make satisfactory academic progress in accordance with institutional standards.

The CSU has further attempted to complement federal and state programs by recognizing, for institutional aid programs, student enrollment on a year-round basis. Unlike federal student aid programs that do not recognize higher award limits for student who enroll year-round, the SUG program specifically recognizes the additional costs and financial need associated with year-round enrollment in order to promote efforts for increased utilization of facilities during the summer in order to respond to enrollment demand and to permit students an opportunity to decrease the time required to complete their degree objective.

Expansion of Nursing Education

CSU plays an important role in providing nursing education. The 2006-07 Budget Act funds several nursing initiatives, including 1) a $2 million increase on a one-time basis for faculty recruitment and start-up costs associated with expansion of nursing education; 2) $1.7 million for expansion of entry-level master's nursing programs pursuant to current law; and 3) $371,000 to fund a 35-student expansion of undergraduate nursing enrollments.

7. *How quickly can CSU increase nursing enrollments beyond the level specified in the 2006-07 budget and recruit students to fill these new slots?*

   RESPONSE: CSU has strong plans that we are confident will fulfill the new funded FTES in nursing in the coming college year. These include the direct-entry Master's programs that will recruit students with a non-nursing baccalaureate degree to move through the requirements for the BS in Nursing, and collect the Registered Nurse license (the RN) along the way, and then will move directly to the master's program. Beyond that, the $2 million in one-time funds will permit campuses to get ready for a further expansion in nursing enrollments – which we anticipate occurring in the BSN programs – pursuant to an initiative that we hope the legislature will fund in the budget for 2007-08.

8. *What role does financial aid play in recruiting students into nursing education programs? Does the system use institutional financial aid to supplement other financial aid resources available to nursing students?*

RESPONSE: For students with financial need who desire to enter nursing education programs the availability of financial aid is an obvious consideration. The CSU does not have institutional aid programs that specifically direct financial aid to nursing students. Nursing students, along with students in all other majors, who otherwise qualify for the system's SUG or Educational Opportunity Program (EOP) grants may receive those funds. For almost 20 years, the CSU has been represented on and provided advice through an advisory committee on nursing for the Health Professions Education Foundation that provides scholarships and loan forgiveness for nursing students who commit to practicing in medically underserved areas of the state. These programs provide valuable assistance to nursing students who enroll in or graduate from nursing programs at all institutions in California.

This year the CSU has also worked with Senator Scott on SB 1309 in support of additional state financial aid programs to promote the recruitment and retention of nursing students and assist those students in completing their programs and entering the nursing profession. SB 1309 would authorize a Cal Grant N award that would provide a one-time stipend of $500 to Cal Grant recipients who enroll in nursing programs. These awards are intended to provide assistance in covering unique costs associated with attending nursing school such as purchasing uniforms, shoes, and medical supplies for their programs as well as paying for required drug screening, physical exams, and background checks. SB 1309 would also make some changes to the recently authorized State Nursing Assumption Program of Loans for Education (SNAPLE). Along with the new SNAPLE awards authorized in the 2006-07 budget, the legislation should increase the likelihood that this program will achieve its objectives of promoting increases in nursing enrollments and the number of trained nursing educators. The establishment of a "pipeline" for ensuring a continued supply of qualified nurses should serve the state well in meeting future demand in this critical area.

9. *How does CSU monitor and evaluate the success of recently funded nursing initiatives to produce more licensed registered nurses and more master's level nurses?*

RESPONSE: CSU will be tracking and monitoring cohorts of students enrolled in the direct master's degree program for retention in program to master's degree and receipt of registered nursing (RN) license. Because these students will be drawn into nursing once they receive their RNs we will consider receipt of the RN as a major indicator of success, recognizing that such students frequently slow down their progress to degree given the increased priorities of work. We will also, of course, count and report on the new and additional degree-recipients that we expect from these programs.

Enrollment Planning

In recent years CSU did not meet its budgeted enrollment targets because of an unexpected enrollment decline, which resulted in a loss of funding for the system. This year, CSU again was expected to fall short of it enrollment goals, but in the end was able to meet its targets.

10. *What do you attribute to the unexpected decline in enrollments in recent years? What strategies did CSU pursue to reverse this trend to meet its targets this year?*

    RESPONSE: The CSU enrollment decline in 2004-05 was not unexpected. In fact, CSU reduced planned enrollment by 5 percent in response to funding levels recommended in the Governor's January budget. When the legislature added additional funding in July 2004 to restore a portion of the planned reduction (1.87 percent), Summer and Fall enrollment admission decisions had already been made thus the only way we could achieve the additional enrollment was in our Winter and Spring terms. CSU was set to achieve the additional growth, but an unexpected increase in graduations and the unforeseen decline in teacher credential enrollments that can be attributed in part from K-12 budget actions resulted in CSU missing its enrollment target for 2004-05 by less than 1 percent. In every year since 2000-01, with the exception of 2004-05 as described above, CSU has met or surpassed its funded target. In 2005-06, CSU was 2,100 FTES over its funded target.

    A fresh emphasis on outreach was an appropriate part of the CSU strategy, ensuring that all California communities knew that they were welcome and could be accommodated. Beyond that, only minor modifications to CSU enrollment management guidelines were made. Thus for example, where appropriate for given CSU campuses, offers of admission were extended to some university-ready students who previously might have been asked first to complete general education mathematics or critical thinking requirements at a local community college.

11. *What is the CSU Board of Trustees doing to understand why there has been a notable drop in CSU enrollments in recent years and prepare appropriately? Has there been a change in enrollment among community college transfer students to CSU? If so, please explain this trend?*

    RESPONSE: While the overall CSU enrollment target is stable, the Board of Trustees is focusing considerable attention on enrollment demand at individual campuses. Specifically we are looking at the fixed-cost needs at smaller campuses that hinder and/or complicate efforts to increase enrollments, as well as the academic planning and management decisions that may suppress enrollment growth at some of our more established campuses.

There has been no marked change in the enrollment of community college transfers to the CSU. College year enrollments of community college transfer students have increased from a little under 45,000 in 1994-95 to an all time high of 53,695 in 2004-05 (totals for 2005-06 are now being processed). Our sense from colleagues in the community colleges is that the decrease in community college students has not been primarily among those preparing and ready for transfer to a senior institution such as CSU.

12. *What is CSU doing to analyze college going rates in California to more accurately project CSU participation rates in the next 5 to 10 years?*

RESPONSE: The Department of Finance's Demographic Research Unit (DRU) is the official enrollment projection agency for the state. CSU collaborates with DRU on its annual postsecondary enrollment projections. Demographers in Finance, the California Postsecondary Education Commission (CPEC), and CSU all have met and agree on the methodologies to use in preparing historical participation rates for use in projections, and all demographers are aware of the strengths and weaknesses of the data and methodologies available to demographers in projections. For almost twenty years, CSU has accepted the postsecondary enrollment projections prepared by Finance and CPEC as providing the umbrella within which CSU makes allocations to its campuses. If improvements to projections are desired, CSU would be delighted to work with Finance, CPEC, the University of California, and especially the California Community Colleges (in order to improve undergraduate transfer projections).

13. *How effective has the early assessment program been in steering students with academic deficiencies into senior year basic skills enrichment classes? Does CSU collect information on the number of students who take these classes, whether they pass, and how many successfully complete a CSU education?*

RESPONSE: The California State University developed several tools to help students who need to improve their mastery of English and mathematics:

- CSU English Success Website
  - Tips and tools to help students improve their critical reading and writing skills are provided.
  - Online multiple-choice modules offer practice English placement tests so that students can receive more detailed information about the areas in which they need additional instruction.
- CSU Math Success Website
  - Advises students how to meet mathematics skill requirements.
  - Students are motivated to take additional mathematics in their senior year of high school.
  - Math diagnostic assessments are available to help students to identify areas in which additional instruction is needed.
  - On-line mathematics practice problems are available to students.

  - Roadmaps advise students how to prepare and improve their math skills.
- 12th Grade Expository Reading and Writing Course
  - The curriculum, aligned with the English/Language Arts Content Standards, was developed by CSU English and high school teachers.
  - It enables students to read and write academic prose effectively and strategically by emphasizing in-depth study of expository, analytical, and argumentative writing.
  - This course was designed as a stand-alone course that can be introduced as a college preparatory English course in 12th grade, or any number of its fourteen modules may be integrated into an existing 12th grade English course.

These tools were fully available in 2005-06. Students who took the EAP at the end of 11th grade in spring 2005 just completed their senior year of high school and are planning to enter CSU in 2006-07. CSU will be collecting information about the extent to which high schools are using the 12th Grade Expository Reading and Writing Course and about the number of students who are accessing and using the English and Math for Success websites.

14. *Based on the early assessment experience, what is CSU doing to evaluate the effectiveness of its own remediation course curricula? Do all remediation courses map to the next level of education?*

RESPONSE: Information about the proficiency of students graduating from high school who enroll at CSU is provided annually to the legislature. The data provides information about the number of students by high school who are fully proficient and those who require remediation. Information about the completion of remediation by the end of the first academic year at CSU is also provided as well as information about the students' academic performance at CSU. This information is available at http://www.asd.calstate.edu/performance/proficiency.shtml. In addition, information is provided to the legislature about the number of students who leave CSU at the end of the first academic year to enroll in a California Community College to complete their remediation.

Ninety-seven percent of those who enroll at CSU as first-time freshmen who return one year later are fully proficient in English and mathematics. CSU believes that the remediation classes developed by its faculty are effective in remediating students who need additional work in English and mathematics.

15. *What information does the system collect on the completion rates of CSU students requiring remediation courses?*

RESPONSE: CSU gathers annual information about the rates of successful remediation among new first-time freshmen found to require further preparatory

work. Approximately 85 percent of first-time freshmen that need remedial work accomplish that work successfully during their first year at a CSU campus.

I trust you find my response to your questions helpful in preparing for the August 23rd hearing. And again, thank you for your effort to move my confirmation forward before the close of the 2006 legislative session.

Warmest Regards,

Debra Farar

DEBRA FARAR

Cc: Chancellor Charles B. Reed
Senate Rules Consultant Nettie Sabelhaus
Executive Vice Chancellor Richard P. West
Assistant Vice Chancellor Karen Y. Zamarripa

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August 28, 2006

The Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 305
Sacramento, California 95814

Dear Senator Perata:

Thank you for your consideration of my confirmation to a second term to the California State University (CSU) Board of Trustees. As a graduate of this great system, I am honored to serve as a member of the governing board and look forward to the opportunity to continue my service to our students and the State. Below please find my response to your August 23rd letter. I look forward to discussing these and other issues with you and members of the Senate Rules Committee later this week.

Statement of Goals

Please provide a brief statement of goals that you hope to accomplish while serving as a member of the CSU Board of Trustees. As a reappointed member, what lessons will you apply from your first term?

RESPONSE: I consider my service on the California State University Board of Trustees to be a privilege and the finest and most important work of my life. During my tenure on the Board, I realized that I share this belief with most current and past Board members.

I have lived and worked in California all of my life. I am a product of California public education and my life work has been in public education. I bring to the CSU Board of Trustees the perspective and empathy of someone who was a first generation college student with limited resources who was able to take advantage of the great opportunity called the California State University.

One of my goals is that all students in California will always have the opportunity that I had and that this great university remains accessible, affordable and accountable to all California students.

To the three "a" words above, I would like to add a fourth "a" word, "adaptable". There is the expectation that the CSU meet the ever changing needs of the people of California and my goal is to remain responsive to the people.

Finally, my goal as a Trustee is to continue to be very informed about and very responsive to the challenges and issues facing the CSU. I have attempted to address some of these challenges and issues in my responses below which will continue to evolve. I have been and hope to continue to be very active as a Trustee. I have never missed a board meeting and I try not to refuse any request related to Trustee business. If the mission of the CSU is to be accessible, it seems natural that as a Trustee of this institution I should also be accessible and connect with students and campuses.

As a reappointed member, a lesson I will apply from my first term is that no one board member has individual authority and that the Trustees' authority is as a board. This is vital for all Trustees to understand. There can be no personal agendas and no individual board member is more powerful or important than others, even the chair of the Board.

During my tenure as chair of the CSU Board of Trustees, I formed a committee composed of faculty, trustees, administrators, staff and students to address the importance of Shared Governance in the CSU. During this time, I learned the value of constant communication with all constituents of the CSU and that communication always involves listening as much as it does speaking.

Finally, during my first term I have come to appreciate the awesome responsibility all of us share at the CSU. The CSU is the largest, fastest growing, and most diverse university system in the country. We are truly the "economic engine" for California and given that California is the largest state in the nation, we are an economic powerhouse for the country. Just about any major move that we make is watched very closely not just in California but by university leaders and policymakers all around the country. All of us need to remember that we have an important leadership role not just here in California but in serving as a model for the entire country. I am very proud to have served and hope to continue to serve as a member of the CSU Board of Trustees.

Governing Board Oversight

The CSU Board of Trustees is entrusted with the responsibility of developing systemwide policies and overseeing their implementation. Recently the board has been criticized for approving executive compensation policies that allow for top executives departing or retiring from the system to have access to generous perquisites or "perks," such as guaranteed tenured faculty positions, transitional compensation for up to a year, and lucrative multi-year contracts for specified service to the system.

This issue comes on the heels of the recent controversy concerning the issuance of University of California executive compensation packages that were not subject to public disclosure or approval by the UC regents.

1. *What role does the CSU Board of Trustees play in reviewing and approving executive compensation policies, such as offering transitional compensation, tenured faculty positions, and multi-year contracts to executives retiring or departing from the system? Is this the correct role or should it be reevaluated?*

2. *How does the CSU Board of Trustees determine its effectiveness in overseeing and holding its system accountable on matters of compensation and other key issues?*

RESPONSE: The CSU Board of Trustees adheres to executive compensation policies that have been approved by the Board in public sessions. The current polices are posted on the CSU website along with a newly created *Executive Compensation Information Page* in response to recent inquiries about the CSU'S policies and practices.

All decisions made by the Board regarding departing campus presidents and other executives conform to policies adopted and revised by the Board between 1981 and 1997. In serving as a Trustee and by virtue of that position, board members are required to implement those policies that have been in place often before their tenure began. The Board votes in open, public session on executive compensation and appointments and when an executive transitions out of his or her position, there is no further need for board action because the transition is part of the original employee agreement.

It is important to note that the CSU Board of Trustees is committed to being open and transparent to the public and will reevaluate our existing polices at our September Board Meeting and how we can better communicate them to the public. In fact, the Board has revised executive compensation policy several times and will continue to reconsider these policies. If any changes need to be made, they will be made in public sessions. As acknowledged in my *Statement of Goals,* I along with all members of the Board of Trustees appreciate the awesome responsibility all of us share at the CSU and are committed to work hard to ensure we uphold the public trust.

College Affordability

The 2006-07 Budget Act buys-out the scheduled CSU fee increases to maintain fees at the 2005-06 level. Annual undergraduate fees will remain at $2,520, teacher preparation student fees at $2,922, and graduate students will remain at $3,102. The board currently has a student fee policy that calls for "moderate and predictable fee increases that are linked to an index that identifies students' ability to pay." The policy also calls for "the provision of financial aid grants to cover the costs of fees for students with the greatest need."

3. *In an earlier correspondence with the Rules Committee, you said you believe the CSU Board of Trustees should have the authority to set student fees. Why do you believe it should have such authority? How do you ensure that the board is accountable to the public when it increases fees? As a board member, what are the key factors you consider when deciding whether to approve student fee increases?*

RESPONSE: I believe my earlier response concerning the Board's authority to set student fees adequately addressed the above question and I would ask that reference is made to that response. I also included in my *Statement of Goals* my commitment to being responsive to the every changing needs of the people of California and with that a commitment that the CSU remains accessible, affordable and accountable to all California students. I can only reiterate that The Board of Trustees always strives to fulfill the CSU's mission of access to quality education for students and accountability to the public in all decisions.

When the Board has to make hard and very painful decisions regarding fee increases, it must take into consideration not only the current budget but also past budgets as well as future budgets to ensure that we are serving the needs of all students who qualify for the university and that they are able to receive a quality education in a timely manner. In addition, the Board always considers state support and financial aid availability in setting appropriate fee rates for its students and that any fee increases always protect the neediest students by providing 33% of all fee revenue to State University Grants.

4. *Does the CSU Board of Trustees evaluate the affordability of a CSU education beyond the cost of student fees? Should the board examine the increased costs of textbooks and whether more state university grant aid should be available to help students cover this expense and other costs of attending college?*

RESPONSE: The Board always considers the total affordability of the CSU which includes books, supplies, food, housing and transportation. We often comment, "You have to live in California to go to school in California" and therefore the total cost of living is always taken into consideration when evaluating the affordability of a CSU education. In addition, the Board considers student budgets that differentiate for students living at campus versus students living at home.

In the past, I have served on the Cal Grant Advisory Board which also considers for Cal Grant eligibility the cost of actual attendance beyond student fees. The CSU also uses this data in determining eligibility for State University Grants and has the ability to award these grants above the level of student fee cost to cover additional expenses for students.

The Board of Trustees has recently addressed the rising cost of text books in the form of the establishment of a systemwide committee that will present its findings next year. Again, I would direct you to my earlier response regarding institutional, state and federal financial aid.

Academic Preparation and Early Assessment

More than half of all incoming CSU freshmen require English and/or math remediation during their first year at the university. In response to this challenge, CSU has developed an early assessment program to provide high school students an early indication of whether they possess the academic skills needed to succeed at CSU. This program also offers students needing stronger academic skills the opportunity to take basic skills classes in their senior year of high school.

5. *How will the CSU Board of Trustees evaluate the effectiveness of the early assessment program in helping improve the completion rates of CSU students?*

RESPONSE: As well as the description of the EAP and evaluation methods described in my earlier response, an immediate and obvious effective evaluation of the early assessment program for the Board would be a decline in the number of CSU students entering as freshman who require remediation. In addition, the number of students electing to take the EAP is a good indicator. Because more than 1/3 of high school students are volunteering to take the exam, we are reaching the students we are expected to serve in the California Master Plan.

In addition, the Board of Trustees in collaboration with faculty has developed a *Facilitating Graduation Initiative* to help students complete their CSU education in a timely and efficient manner by offering better advising and clear paths to a CSU degree. Information about the proficiency of students is provided annually to the legislation and is available on the CSU website.

I hope these responses are adequate and again thank you for consideration of my confirmation.

Sincerely,

Debra Farar

Debra Farar

The California State University

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August 15, 2006

The Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 205
Sacramento, California 95814

Dear Senator Perata:

Thank you for your consideration of my confirmation to a term on the California State University (CSU) Board of Trustees later this month. As an alumnus of CSU San Bernardino, I am especially proud to serve as a member of the governing board, and take very seriously this opportunity to serve the students and citizens of California. As you know, I have served as a member of the California Community College Board of Governors per your action last year and hope to utilize my experience with both boards to support our strong partnership with our two-year colleges. Below please find my response to your August 10 letter dealing with issues of significance to both the Legislature and Trustees. I look forward to discussing these and other issues with you and members of the Senate Rules Committee in the next two weeks, and hopefully for the next several years as we work jointly to ensure that the promise of the Master Plan for Higher Education continues to be fulfilled for the students of California.

Statement of Goals

1. *Please provide a brief Statement of Goals that you hope to accomplish while serving as a member of the CSU Board of Trustees. As a reappointed member, what lessons will you apply from your first term?*

   RESPONSE: As a member of the CSU Board of Trustees, I look forward to accomplishing many things during my service. First, as a former member of the California Community College Board of Governors I believe I can provide a unique perspective. I look forward to the opportunity to increase the working relationship between our two systems, improving on the collaboration we have now, and looking for new opportunities to improve student success in the future. One area I will work to see this partnership grow is the area of community college transfer to our CSU campuses. Increasing access to the CSU for transfer ready community college students is important to our mission and to California's workforce.

Additionally, I will work to increase access to college for California's underserved populations while also increasing college enrollment rates in traditionally low college attendance regions. I believe we can do this by continuing system efforts such as "Super Sundays" to reach out to underserved communities and demonstrating that college and the CSU is an achievable goal. We can provide a pathway and support system in order to make that goal a reality. In areas with low college going rates, like the Inland Empire where I am from, I think we can expand the CSU's partnerships with our K-12 partners to develop outreach programs and educational initiatives to increase the number of high school graduates electing to attend college.

Finally, the CSU Board of Trustees has had a tradition of sound fiscal management, forward and proactive thinking and a commitment to increasing student graduation rates. I hope to become a leader on the Board, taking an active role to continue improving in these areas and identifying other areas where we can expand and enhance our educational mission.

CSU's Improved Revenue Picture

The 2006-07 Budget Act provides a General Fund increase of 7.4 percent above the 2005-06 level and funds the higher education compact. In accordance with the compact, the budget funds a 2.5 percent increase in funding for enrollment growth, a 3 percent general increase to basic budget support and buy-out scheduled fee increases.

2. *What do you believe are the most critical issues CSU should address given the increased funding the system has received for the upcoming fiscal year?*

   RESPONSE: The CSU 2006-07 Budget Plan approved by the Board of Trustees in October 2005 established the most critical needs at CSU, given the expected level of funding from the State pursuant to the higher education compact with the Administration.

   The first priority for new funding is contractual and on-going mandatory costs such as increases in employee health benefit premiums, the ongoing annualized cost of collective bargaining agreements, and the opening of new classroom and educational facility space. Recently, CSU committed new resources to assist campuses with the rising cost of energy utilities (principally natural gas and electricity). Approximately 15 percent of all new funding we received in 2006-07 was used to fund these types of mandatory cost obligations.

   Another one-third of the new funding in 2006-07 was allocated to increase student enrollment by 2.5 percent, expand nursing program enrollments by 443 FTES in 2006-07, and increase the pool of funds available for student financial aid. CSU presidents have budget flexibility to address critical instructional needs at each campus and are expected to provide quality academic instruction, achieve funded enrollment levels, and provide financial aid to needy students to fund the statewide mandatory fees.

   At CSU's request, the budget included funding for math-science and nursing initiatives, as well as the permanent restoration of outreach funds that had been reduced in prior years. These items account for 5 percent of the new funding the university received in 2006-07.

The Board authorized the use of another 5 percent of new funding to address ongoing funding lags in the areas of technology upgrades and innovations to deliver and support instructional programs, library core collections, and addressing deferred maintenance backlogs. These funds represent an investment in the long-term quality of our instructional programs.

After these critical items, the Board of Trustees determined that the highest priority for remaining discretionary funds is to improve the competitiveness of CSU employee salaries by addressing critical salary lags for specific employee groups. These salary lags exist for nearly all employee groups: physicians, faculty, public safety officers, professional support staff, administrative staff, skilled craftsmen and executives. The Board endorsed a five-year plan to address salary lags, utilizing approximately 42 percent of the new funding in 2006-07. Over the five years, roughly 70 percent of the funding in this area will be used to address the faculty salary lag. This action is critical if we hope to stop the loss of highly skilled, professionally trained staff that can find better salaries in similar fields in the national job market. Again, in order to ensure high quality instructional programs, our campuses must be able to realistically compete in this job market so that we can hire the best and brightest faculty to benefit our students.

As a new member of the Board I concur with these priorities in 2006/07 and expect many of the same as we prepare our 2007/08 budget this fall.

3. *What can the CSU Board of Trustees do to take advantage of the improved revenue picture for the system and plan for the future, particularly in anticipation of less economically favorable times?*

RESPONSE: The Board's must comprehensively evaluate all issues affecting the financial stability and educational quality of the university, especially looking at the resources provided by the State. Only in that context can a budget framework be developed that is compatible with our strategic plan for the university.

The Board needs to work with the Chancellor and campus presidents to ensure the CSU has plans in place for a strategic academic growth plan that is responsive to adjustments in funding from the State. Our overall guiding principals are of course the goals established in the Master Plan.

I believe that part of my job as a member of the Board of Trustees will be to work collaboratively with all members of the CSU community, including my colleagues on the Board, the Chancellor, campus presidents and others, to help the university receive adequate budget resources--resources that are critical to improving student access, academic quality and the vitality of the university's workforce.

In tandem with that responsibility, as a Board member I must also be prepared to make difficult decisions that help preserve the quality of the university when economic conditions worsen or budgets are insufficient to meet our total needs. The primary priority in realigning expenditures with available resources should be the preservation of the quality of academic instruction.

Finally, the Board must make sure that we have a sustainable student fee policy that

recognizes student fees as a necessary and critical ingredient for achieving the university's Master Plan mission. The Board must provide for reasonably predictable and affordable student fees that support the overall educational program and are linked to a comprehensive financial aid policy that ensures students with the most need will continue to have their fee obligations met.

College Affordability

The 2006-07 Budget Act buys out the scheduled CSU fee increases to maintain fees at the 2005-06 level. Annual undergraduate fees will remain at $2,520; teacher preparation student fees at $2,922; and graduate students will remain at $3,102.

Currently, the State has no student fee policy for its institutions of higher education, and typically sets fees based on the fiscal condition of the State. During bad economic times fees are increased. During good economic times fees remain unchanged or are decreased. The State has several financial aid programs designed to maintain access to college by offsetting the cost of fees. State financial aid offers little in the way of offsetting the cost of other living expenses.

4. *What do you believe should be the key features of a student fee policy for CSU students?*

   RESPONSE: The Board of Trustees adopted a student fee policy in 1993 that recognizes the State has the primary responsibility for funding the cost of instruction, while also acknowledging that students and their families have a responsibility to cover a fair share of total educational costs associated with attaining their college goals. The Board policy calls for moderate and predictable fee increases that are linked to an index that identifies students' ability to pay. It calls for the provision of financial aid grants to cover the cost of fees for students with the greatest need. It analyzes CSU fee rates with comparison public institutions recognized by the California Postsecondary Education Commission. The Board policy recognizes that there should be differential fees to recognize the higher cost of graduate instruction and the potential for higher salaries associated with graduate degrees.

   Just as the private institutions in California are able to set fees in accordance with funding they receive from the State in the form of Cal Grants and other student fee incentives, the Board of Trustees is similarly capable of analyzing State General Fund support projections and the availability of state and federal financial aid to set appropriate fee rates for its students. Thus, there does not appear to be a need for a comprehensive State student fee policy that goes beyond a declaration that fees should be moderate and predictable, based on students' ability to pay, and that the governing boards have the primary responsibility for setting student fees. Governing boards should set fees within the context of available State resources, the need to improve and maintain quality and access, an appropriate student share of cost, and comparison to fee levels at comparable national institutions.

5. *What financial aid policies should the CSU Board of Trustees pursue to ensure that all financially needy CSU students receive some form of financial assistance? What can be done to provide more financial aid that covers the overall cost of attending college and not just narrowly addressing the cost of fees?*

RESPONSE: The Board has promoted and will continue to promote expansion of the State's Cal Grant programs to address the needs of all California students enrolled in our public and private institutions. This year the CSU, working with our California State Student Association, sponsored AB 2813 (De La Torre) in an effort to address some of the most obvious inequities in the current Cal Grant program to address affordability for students. Three components were proposed including: (1) fees/tuition for first year Cal Grant B students, (2) doubling the number of competitive awards, and (3) modifying the age restriction for access to Cal Grants from age 24 up to 27 to better reflect the age of students throughout our college and university systems. The bill is now before the Appropriations Committee in your house with only one provision remaining due to costs – changing the age "cap" on the Cal Grants. We hope the members of the committee will support this small step this year and will consider additional efforts next session to ensure college remains affordable in California.

The Board has adopted, and will continue to support, a federal agenda that includes, as a priority, increasing the availability of student financial aid at the federal level. The purchasing power of the Federal Pell Grant, which is supposed to serve as the foundation for all financial aid for undergraduates, has failed to keep pace with inflation and rising costs of postsecondary education. In addition to advocating for higher Pell Grant maximum award and overall funding increases, the CSU has also advocated for altering the current allocation formula for federal campus-based student financial aid funds to assure allocation of those funds on a fair-share basis to institutions with growing populations of needy students and to newer campuses that are most disadvantaged by the current formula.

To provide more student financial aid, particularly with the objective of recognizing the overall cost of attending college, the State must renew its commitment to provide General Fund support for financial aid programs. Since 1992, CSU has assumed over $230 million in financial aid given the lack of state support for state-supported programs. This support has been achieved by dedicating as much as 33 percent of all new student fee revenue to financial aid. Increasing student aid support above this percentage would cause significant harm to the university's ability to address critical academic needs. As I indicated earlier, only half of new revenue received by the university is typically available to address discretionary, priority needs each year.

The State's broad higher education policies, already in place and reflected in the structure and financing of its public postsecondary institutions and financial aid programs, is designed to address several aspects of affordability. For example,

- The community colleges serve as a gateway to four-year public institutions by providing a low-cost, local-based pathway for general higher education core instruction that can be transferred towards degree requirements of baccalaureate instruction. Affordability concerns related to housing, transportation, and tuition are particularly mitigated through community colleges if access and costs are a specific concern for students or their families.
- CSU and UC have 60/40 transfer goals for incoming students that guarantee access for community college transfers. There are 23 CSU campuses in major population areas that offer access to home-bound CSU students.

- CSU and UC each offer institutional financial aid based on expected family contributions that mitigate the cost of attendance for students with need. Eligible students also have access to the State's Cal Grants to offset tuition and systemwide fees. Students with the most need generally receive a dollar for dollar offset of systemwide fee charges.

6. *What policies have the CSU Board of Trustees adopted to guide distribution of CSU institutional financial aid in a way that most effectively complements State and federal need-based financial aid programs?*

   RESPONSE: To effectively complement the State's Cal Grant programs and provisions for the waiver of mandatory fees, the maximum amount that a student can receive from the State University Grant (SUG) program takes into account the value of fee waivers and Cal Grant awards designated for coverage of fees. As a further means of complementing State and federal student aid programs, student eligibility for CSU institutional aid programs parallels basic eligibility standards used for federal and State programs with respect to the need analysis methodology, enrollment in eligible programs, restrictions against being in default on student loans or owing repayments of previously received grants, and requirements to make satisfactory academic progress in accordance with institutional standards.

   The CSU has complemented federal and State programs by recognizing, for institutional aid programs, student enrollment on a year-round basis. Unlike federal student aid programs that do not recognize higher award limits for student who enroll year-round, the SUG program specifically recognizes the additional costs and financial need associated with year-round enrollment in order to promote efforts for increased utilization of facilities during the summer in order to respond to enrollment demand and to permit students an opportunity to decrease the time required to complete their degree objective.

Expansion of Nursing Education

CSU plays an important role in providing nursing education. The 2006-07 Budget Act funds several nursing initiatives, including 1) a $2 million increase on a one-time basis for faculty recruitment and start-up costs associated with expansion of nursing education; 2) $1.7 million for expansion of entry-level master's nursing programs pursuant to current law; and 3) $371,000 to fund a 35-student expansion of undergraduate nursing enrollments.

7. *How quickly can CSU increase nursing enrollments beyond the level specified in the 2006-07 budget and recruit students to fill these new slots?*

   RESPONSE: CSU is confident that we will fulfill the newly funded nursing FTES in the coming college year. These include the direct-entry Master's programs that will recruit students with a non-nursing baccalaureate degree to move through the requirements for the BS in Nursing, and collect the Registered Nurse license (the RN) along the way, and then will move directly to the master's program. Beyond that, the $2 million in one-time funds will permit campuses to prepare for a further expansion in nursing enrollments – which we anticipate occurring in the BSN programs – pursuant to an initiative that we hope the Legislature will fund in the budget for 2007-08. Additionally, many of our campuses are expanding their partnerships with local hospitals to increase local nursing enrollments through innovative programs. At my

alma mater, CSU San Bernardino, a partnership with two local hospitals has provided approximately 80 new nursing program slots for local students.

8. *What role does financial aid play in recruiting students into nursing education programs? Does the system use institutional financial aid to supplement other financial aid resources available to nursing students?*

RESPONSE: For students with financial need who desire to enter nursing education programs the availability of financial aid is an obvious consideration. The CSU does not have institutional aid programs that specifically direct financial aid to nursing students. Nursing students, along with students in all other majors, who otherwise qualify for the system's SUG or Educational Opportunity Program (EOP) grants may receive those funds. For almost 20 years, the CSU has been represented on and provided advice through an advisory committee on nursing for the Health Professions Education Foundation that provides scholarships and loan forgiveness for nursing students who commit to practicing in medically underserved areas of the State. These programs provide valuable assistance to nursing students who enroll in or graduate from nursing programs at all institutions in California.

This year the CSU has also worked with Senator Scott on SB 1309 in support of additional State financial aid programs to promote the recruitment and retention of nursing students and assist those students in completing their programs and entering the nursing profession. SB 1309 would authorize a Cal Grant N award that would provide a one-time stipend of $500 to Cal Grant recipients who enroll in nursing programs. These awards are intended to provide assistance in covering unique costs associated with attending nursing school such as purchasing uniforms, shoes, and medical supplies for their programs as well as paying for required drug screening, physical exams, and background checks. SB 1309 would also make some changes to the recently authorized State Nursing Assumption Program of Loans for Education (SNAPLE). CSU has been an active partner with Senator Scott on this measure and looks forward to its enactment later this year.

9. *How does CSU monitor and evaluate the success of recently funded nursing initiatives to produce more licensed registered nurses and more master's level nurses?*

RESPONSE: CSU will be tracking and monitoring cohorts of students enrolled in the direct master's degree program for retention in the program to the master's degree and receipt of registered nursing (RN) license. Because these students will be drawn into nursing once they receive their RNs we will consider receipt of the RN as a major indicator of success, recognizing that such students frequently slow down their progress to degree given the increased priorities of work. We will also, of course, count and report on the new and additional degree-recipients that we expect from these programs.

Enrollment Planning

In recent years CSU did not meet its budgeted enrollment targets because of an unexpected enrollment decline, which resulted in a loss of funding for the system. This year, CSU again

was expected to fall short of it enrollment goals, but in the end was able to meet its targets.

10. *What do you attribute to the unexpected decline in enrollments in recent years? What strategies did CSU pursue to reverse this trend to meet its targets this year?*

RESPONSE: The CSU enrollment decline in 2004-05 was not unexpected. In fact, CSU reduced planned enrollment by 5 percent in response to funding levels recommended in the Governor's January budget.

When the Legislature added additional funding in July 2004 to restore a portion of the planned reduction (1.87 percent), Summer and Fall enrollment admission decisions had already been made thus the only way we could achieve the additional enrollment was in our Winter and Spring terms. CSU was set to achieve the additional growth, but an unexpected increase in graduations and the unforeseen decline in teacher credential enrollments that can be attributed in part from K-12 budget actions resulted in CSU missing its enrollment target for 2004-05 by less than 1 percent. In every year since 2000-01, with the exception of 2004-05 as described above, CSU has met or surpassed its funded target. In 2005-06, CSU was 2,100 FTES over its funded target.

A fresh emphasis on outreach was an appropriate part of the CSU strategy, ensuring that all California communities knew that they were welcome and could be accommodated. Beyond that, only minor modifications to CSU enrollment management guidelines were made. Thus for example, where appropriate for given CSU campuses, offers of admission were extended to some university-ready students who previously might have been asked first to complete general education mathematics or critical thinking requirements at a local community college.

11. *What is the CSU Board of Trustees doing to understand why there has been a notable drop in CSU enrollments in recent years and prepare appropriately? Has there been a change in enrollment among community college transfer students to CSU? If so, please explain this trend?*

RESPONSE: While the overall CSU enrollment target is stable, the Board of Trustees is focusing considerable attention on enrollment demand at individual campuses. Specifically we are looking at the fixed-cost needs at smaller campuses that hinder and/or complicate efforts to increase enrollments, as well as the academic planning and management decisions that may suppress enrollment growth at some of our more established campuses.

There has been no marked change in the enrollment of community college transfers to the CSU. College year enrollments of community college transfer students continue to increase from a little under 45,000 in 1994-95 to an all time high of 53,695 in 2004-05 (totals for 2005-06 are now being processed). My sense as a now former California Community College Board of Governor's member, is that the decrease in community college students has not been primarily among those preparing and ready for transfer to a four-year institution such as CSU but we will be diligent in tracking any changes as we move forward.

12. *What is CSU doing to analyze college going rates in California to more accurately project CSU participation rates in the next 5 to 10 years?*

RESPONSE: The Department of Finance's Demographic Research Unit (DRU) is the official enrollment projection agency for the State. CSU collaborates with DRU on its annual postsecondary enrollment projections. Demographers in Finance, the California Postsecondary Education Commission (CPEC), and CSU all have met and agree on the methodologies to use in preparing historical participation rates for use in projections, and all demographers are aware of the strengths and weaknesses of the data and methodologies available to demographers in projections. For almost twenty years, CSU has accepted the postsecondary enrollment projections prepared by Finance and CPEC as providing the umbrella within which CSU makes allocations to its campuses.

13. *How effective has the early assessment program been in steering students with academic deficiencies into senior year basic skills enrichment classes? Does CSU collect information on the number of students who take these classes, whether they pass, and how many successfully complete a CSU education?*

RESPONSE: CSU has developed several tools to help students who need to improve their mastery of English and mathematics:

- CSU English Success Website
  - Tips and tools to help students improve their critical reading and writing skills are provided.
  - Online multiple-choice modules offer practice English placement tests so that students can receive more detailed information about the areas in which they need additional instruction.
- CSU Math Success Website
  - Advises students how to meet mathematics skill requirements.
  - Students are motivated to take additional mathematics in their senior year of high school.
  - Math diagnostic assessments are available to help students to identify areas in which additional instruction is needed.
  - On-line mathematics practice problems are available to students.
  - Roadmaps advise students how to prepare and improve their math skills.
- 12th Grade Expository Reading and Writing Course
  - The curriculum, aligned with the English/Language Arts Content Standards, was developed by CSU English and high school teachers.
  - It enables students to read and write academic prose effectively and strategically by emphasizing in-depth study of expository, analytical, and argumentative writing.
  - This course was designed as a stand-alone course that can be introduced as a college preparatory English course in 12th grade, or any number of its fourteen modules may be integrated into an existing 12th grade English course.

These tools were fully available in 2005-06. Students who took the EAP at the end of 11th grade in spring 2005 just completed their senior year of high school and are planning to enter CSU in 2006-07. CSU will be collecting information about the extent to which high schools are using the 12th Grade Expository Reading and Writing Course and about the number of students who are accessing and using the English and Math for Success websites.

14. *Based on the early assessment experience, what is CSU doing to evaluate the effectiveness of its own remediation course curricula? Do all remediation courses map to the next level of education?*

RESPONSE: Information about the proficiency of students graduating from high school who enroll at CSU is provided annually to the Legislature. The data provides information about the number of students by high school who are fully proficient and those who require remediation. Information about the completion of remediation by the end of the first academic year at CSU is also provided as well as information about the students' academic performance at CSU. This information is available at http://www.asd.calState.edu/performance/proficiency.shtml. In addition, information is provided to the Legislature about the number of students who leave CSU at the end of the first academic year to enroll in a California Community College to complete their remediation.

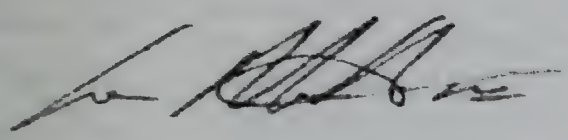
Ninety-seven percent of those who enroll at CSU as first-time freshmen who return one year later are fully proficient in English and mathematics. CSU believes that the remediation classes developed by its faculty are effective in the remediation of students who need additional work in English and mathematics.

15. *What information does the system collect on the completion rates of CSU students requiring remediation courses?*

RESPONSE: CSU gathers annual information about the rates of successful remediation among new first-time freshmen found to require further preparatory work. Approximately 85 percent of first-time freshmen that need remedial work accomplish that work successfully during their first year at a CSU campus.

I trust you find my responses to your questions helpful in preparing for the August 23rd hearing. And again, thank you for your effort to move my confirmation to the CSU Board of Trustees forward before the close of the 2006 legislative session.

Best Regards,



Lou Monville
Trustee

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August 28, 2006

The Honorable Don Perata, Chair
Senate Rules Committee
State Capitol, Room 305
Sacramento, Ca 95814

Dear Senator Perata:

Thank you for considering my confirmation to the California State University (CSU) Board of Trustees. I am very proud of my degree from CSU San Bernardino and consider this appointment and the opportunity to serve a privilege. I would also like to thank you and your colleagues for confirming me unanimously last year to the California Community College Board of Governors. I found my tenure on the Board of Governors to be rewarding and look forward to bringing the knowledge I gained there to my service in the CSU.

Below you will find my statement of goals and responses to the questions posed from your letter dated August 23. I look forward to discussing these issues as well as any others at the August 30 confirmation hearing. I hope this will be the first of many dialogues we will have as we all work to improve higher education in California and at the CSU.

Statement of Goals

As a member of the CSU Board of Trustees, I look forward to accomplishing many things during my service. First, as a former member of the California Community College Board of Governors I believe I can provide a unique perspective to the CSU. I look forward to the opportunity to increase the working relationship between our two systems, improving on the collaboration we have now, and seeking new opportunities to improve student success in the future. One area I will work to see this partnership grow is in the area of community college transfers to our CSU campuses. Increasing access to the CSU for transfer-ready community college students is important to our mission and to California's workforce.

Additionally, I will work to increase access to college for California's underserved populations while also increasing college enrollment rates in traditionally low college attendance regions. I believe we can do this by continuing system efforts such as "Super Sundays" to reach out to underserved communities and demonstrating that

college and the CSU is an achievable goal. We can provide a pathway and support system in order to make that goal a reality. In areas with low college going rates, like the Inland Empire where I am from, I think we can expand the CSU's partnerships with our K-12 partners to develop outreach programs and educational initiatives to increase the number of high school graduates electing and eligible to attend college.

Finally, the CSU Board of Trustees has had a tradition of sound fiscal management, forward and proactive thinking and a commitment to increasing student graduation rates. I hope to become a leader on the Board, taking an active role to continue improving in these areas and identifying other areas where we can expand and enhance our educational mission.

Governing Board Oversight

The CSU Board of Trustees is entrusted with the responsibility of developing system wide policies and overseeing their implementation. Recently the board has been criticized for approving executive compensation policies that allow for top executives departing or retiring from the system to have access to generous perquisites or "perks," such as guaranteed tenured faculty positions, transitional compensation for up to a year, and lucrative multi-year contracts for specified service to the system.

This issue comes on the heels of the recent controversy concerning the issuance of University of California executive compensation packages that were not subject to public disclosure or approval by the UC Regents.

1. *What role does the CSU Board of Trustees play in reviewing and approving executive compensation policies, such as offering transitional compensation, tenured faculty positions, and multi-year contracts to executives retiring or departing from the system? Is this the correct role or should it be reevaluated?*

Response: I attended my first Board of Trustees meeting in June, when this issue first arose. While I have not been involved in and aware of past actions and policies of the Board, I am looking forward to the discussions we will be having this fall. In fact, we are scheduled to review the entire policy at our September meeting. However, in my own business I know the importance of reviewing our policies on a regular basis in order to remain competitive in the market, retain current employees and attract new ones. I believe the Board of Trustees has long-standing policies on these issues adopted in public session to protect the quality and integrity of the institution. I expect to bring my own personal and professional experience to these issues as the Board of Trustees examines our policies in the next few months.

2. *How does the CSU Board of Trustees determine its effectiveness in overseeing and holding its system accountable on matters of compensation and other key issues?*

Response: The CSU Board of Trustees can ensure effectiveness and accountability on compensation and other key matters through regular review of compensation and other related policies. The Board of Trustees hires the Chancellor and works in close partnership with him in order to make sure the CSU remains one of the best higher education institutions in the world. I believe Chancellor Reed and the Board are committed to ensuring that the CSU is accountable to the people of the state not only in the use of resources but also in protecting and maintaining the value the CSU brings to our students and the state.

On compensation, the Board acted last year by creating a 5-year plan to address the salary lag for all CSU employees including faculty, public safety and medical, classified and executive personnel, setting out a long-term strategy to be sure our employees are competitively compensated throughout the system. As I mentioned above, we will be having a comprehensive review of our executive compensation policy at our September meeting with the Chancellor and appropriate higher education compensation consultants. From those discussions any needed revisions or additions are planned to come forward at our November Board of Trustees meeting for action. This type of regular review, discourse and action is appropriate for all key system policies.

College Affordability

The 2006-07 Budget Act buys-out the scheduled CSU fee increases to maintain fees at the 2005-06 level. Annual undergraduate fees will remain at $2,520, teacher preparation student fees at $2,922, and graduate students will remain at $3,102. The board currently has a student fee policy that calls for "moderate and predictable fee increases that are linked to an index that identifies students' ability to pay." The policy also calls for "the provision of financial aid grants to cover the costs of fees for students with the greatest need."

3. *In an earlier correspondence with the Rules Committee, you said you believe the CSU Board of Trustees should have the authority to set student fees. Why do you believe it should have such authority? How do you ensure that the board is accountable to the public when it increases fees? As a board member, what are the key factors you consider when deciding whether to approve student fee increases?*

Response: I believe the CSU Board of Trustees should have the duty of setting student fees because by law we have the ultimate responsibility to ensure students get the education they deserve and that the system has the means to provide it to them. As the body charged with creating the system budget request, setting system fiscal policy and ensuring the successful academic mission of the system we are in the best position to make those decisions as needed.

When an increase in fees becomes necessary I believe we ensure accountability through a deliberative and public process that includes participation by those impacted by the fee decision, our students. Additionally, as fee increases are considered, I believe we should also be addressing student aid support to offset, as much as possible, the impacts the fee increases will have on those who can afford it the least.

As a Board member there are three key questions I would consider in whether to approve a student fee increase:

a) Is the fee increase moderate and predictable and linked to a student's ability to pay as required by the student fee policy adopted by the Board of Trustees in 1993?
b) Have we looked at all other reasonable options for meeting system fiscal needs and preserving the academic core of the system?
c) How are we using the State and Federal financial aid resources to offset the potential impacts these fees will have on our most vulnerable students?

4. *Does the CSU Board of Trustees evaluate the affordability of a CSU education beyond the cost of student fees? Should the board examine the increased costs of textbooks and whether more state university grant aid should be available to help students cover this expense and other costs of attending college?*

Response: In reviewing past Board of Trustees agendas it appears the Board receives regular reports on issues such as cost of education, student fees and charges as well as financial aid. While I was not on the Board, I understand the Board just received a report on student indebtedness, for example. The California Postsecondary Education Commission (CPEC) recently reported that student fees are a very small part of the total cost of attending college. With that in mind, we must go beyond just the issue of fees and review the resources provided by the state to the CSU, the availability of grant aid for eligible students and the costs of things such as text books and housing. The CSU sponsored a bill this year to begin addressing some of these issues in the Cal Grant program in order to better serve our students and I hope to be a part of similar efforts as a new member of the Board.

Academic Preparation and Early Assessment

More than half of all incoming CSU freshmen require English and/or math remediation during their first year at the university. In response to this challenge, CSU has developed an early assessment program to provide high school students an early indication of whether they possess the academic skills needed to succeed at CSU. This program also offers students needing stronger academic skills the opportunity to take basic skills classes in their senior year of high school.

5. *How will the CSU Board of Trustees evaluate the effectiveness of the early assessment program in helping improve the completion rates of CSU students?*

Response: The CSU will evaluate the effectiveness of the early assessment program (EAP) in several ways. First, we will look at the rate of students entering the CSU who are still in need of remedial work after participating in the EAP. Second, we can track remediation rates of EAP students over time to continually improve the EAP system and decrease the need of first-time freshmen needing remediation, as well as, work with our K-12 partners to improve local curriculum to further reduce remediation rates. Finally, we need to track students who participated in both the EAP and 12th Grade Expository Reading and Writing Course to identify if the combination of those efforts show a reduction in those needing remediation for English.

Thank you for the opportunity to address these important questions in preparation for the August 30th hearing. I welcome the opportunity to discuss these issues then and hopefully as we work together in the future to improve the CSU system. I appreciate the time and effort of you and your staff have given to move my confirmation forward before the end of the 2006 legislative session. Should you have any questions regarding these answers or any other issues, please feel free to call me directly at (951) 781-2240.

Best Regards,

Lou Monville
Trustee

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